Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the	)	
Application of Verizon Maryland, Inc.,	)	
Verizon Washington, D.C., Inc.,	)	
Verizon West Virginia, Inc., Bell Atlantic	)	
Communications, Inc., (d/b/a Verizon	)	WC Docket No. 02-384
Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise	)	
Solutions, Verizon Global Networks, Inc.	)	
And Verizon Select Services, Inc., for	)	
Authorization To Provide In-Region	)	
InterLATA Services in the States of Maryland,	)	
West Virginia and the District of Columbia	)	

COMMENTS OF FIBERNET, LLC

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COMMENTS OF FIBERNET, LLC

FiberNet, LLC ("FiberNet"), by counsel, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission")Public Notice (DA 02-3511) issued on December 19, 2002, in the above-captioned proceeding. The Public Notice invites interested parties to respond to the Application of Verizon Maryland, Inc., Verizon West Virginia, Inc. and Verizon Washington, D.C., et.al. to provide in-region interLATA services in the States of Maryland and West Virginia, as well as in the District of Columbia, pursuant to Section 271 of the Communications Act of 1934, as amended ("Act"). Due to the scope of its operations, FiberNet's comments relate only to the Application of Verizon West Virginia, Inc. ("Verizon-WV").

I. Introduction and Summary

Formed in 1997, FiberNet is a facilities-based competitive local exchange carrier ("CLEC") providing service in Verizon-WV's service territory in the State of West Virginia. FiberNet delivers service to its customers primarily using a combination of its own switching facilities and unbundled loops purchased from Verizon-WV. FiberNet also does a limited amount of service on a resale basis in West Virginia. Since 1997, FiberNet has invested more than $45 million to build a state-of-the-art fiber optic network throughout the State of West Virginia. This is a significant infrastructure investment that has led to substantially lower telecommunications costs for numerous West Virginia businesses, thereby enhancing their ability to better compete in the global economy. FiberNet has also provided a number of new telecommunications services to consumers in West Virginia. At present, FiberNet employs over 140 individuals and provides local, long distance and advanced telecommunications services primarily to business customers located in Charleston, Huntington, Parkersburg, Beckley, Lewisburg, Logan, Fairmont, Clarksburg, Morgantown, Martinsburg and Wheeling, West Virginia.

FiberNet is understandably proud of the successes it has been able to achieve since 1997. This company has come a long way in a relatively short period of time. However, these successes have not come without a price. Indeed, FiberNet has been engaged in a perpetual struggle with Verizon-WV with respect to the ordering and provisioning of telecommunications services for its customers in West Virginia almost from the start of operations. While the nature of these struggles change with the passage of time, there is always some sort of on-going problem or issue with Verizon-WV.

Being a Competitive Local Exchange Carrier ("CLEC"), FiberNet is in the somewhat unique position of being both a customer and competitor of Verizon-WV. As a result of its reliance on Verizon-WV for the provisioning of telecommunications services on both a resale and unbundled network element basis, any problems that FiberNet encounters with Verizon-WV directly impacts FiberNet's ability to adequately seek and provide service to its customers. Thus, based on the multitude of problems that FiberNet has experienced over the past several years in its business relationship with Verizon-WV, it is fair to say that FiberNet's successes in West Virginia have been achieved in spite of Verizon-WV, not because of it.

Pursuant to Section 271 of the Communications Act, a Bell Operating Company such as Verizon-WV meets the statutory requirements for entry into the long distance market only where it is providing nondiscriminatory access and interconnection to its network in accordance with the 14-point competitive checklist specifically contained in Section 271, and the grant of its application would serve the public interest. By these comments, FiberNet strongly opposes Verizon-WV's Application for Section 271 relief in West Virginia because Verizon-WV, through a combination of discriminatory/anti-competitive practices and regulatory indifference on the state level, has effectively stifled the development of meaningful local exchange competition. As a direct result of its failure to comply with a number of the items required by the 14-point competitive checklist, Verizon-WV has clearly failed to demonstrate that the competitive local exchange market in West Virginia is fully and irreversibly open to competitors.

Specifically, the evidence and testimony in West Virginia clearly demonstrates that:

- Verizon-WV fails Checklist Item 1 because it does not provide interconnection services in accordance with federal law. This is shown by Verizon-WV's discriminatory and unlawful application of its GRIPs policies and practices;
- Verizon-WV fails Checklist Item 2 because it does not provide nondiscriminatory access to unbundled network elements ("UNEs") in accordance with law, and this failure is reflected in many insidious and debilitating ways, most notably in the broken and error prone Operational Support Systems ("OSS") that competitors are forced to utilize, and in the excessively high rates that FiberNet is required to pay for UNEs. Verizon-WV also effectively denies competitors access to UNEs in more overt ways, such as its inability to consistently provision reliable UNE DS-1 high capacity loops;
- Verizon-WV fails Checklist Items 4 and 5 because it does not provide FiberNet with local loop transmission from the central office to the customer's premises unbundled from local switching when Verizon-WV has never fulfilled a FiberNet order for a Dark Fiber UNE as a local loop from its central offices to customer premises;
- Verizon-WV fails Checklist Item 8 because it does not provide white pages directory listings for CLEC customers when CLEC customers are routinely left out of Verizon-WV's telephone directories;
- Verizon-WV fails Checklist Item 12 because it does not provide dialing parity to facilities-based CLECs in recognized EAS areas that cross state boundaries;
- Verizon-WV fails Checklist Item 13 because it does not provide reciprocal compensation arrangements in accordance with law when Verizon-WV charges

CLECs for the transport of calls coming from the CLEC, but refuses to pay for the transport of its own calls carried over facilities of the CLEC, and when Verizon-WV refuses to properly compensation CLEC for ISP-bound minutes;

- Given the state of the competitive telecom industry in general, the nominal amount of actual local exchange competition that exists in West Virginia today, and Verizon-WV's continued efforts to thwart the successful implementation of the local competition provisions of the Act, approval of Verizon-WV's Section 271 Application is premature and contrary to the public interest.

FiberNet will, of course, elaborate on each of these failings. In brief, these failings force FiberNet to incur excessive and unjust costs to initiate "fixes" and "work-arounds" of Verizon-WV's systems, policies and procedures. More importantly, these failings negatively impact upon FiberNet's operations, customers and business, and paint a far more dismal picture concerning the state of the development of local exchange competition in West Virginia than what is presented in Verizon-WV's application for long distance authority.

In these comments, FiberNet will further dispel the basic fallacy being perpetuated by Verizon-WV that all is well in the competitive local exchange marketplace in West Virginia. FiberNet's comments are intended to provide the Commission with a real world sense of what is really going on in the competitive local exchange market in West Virginia, and why so few CLECs are actually providing competitive local exchange service there. FiberNet is convinced that what Verizon-WV has presented to the Commission is a distortion of the CLEC/Verizon-WV business relationship. FiberNet's comments will further dispel the myth that Verizon-WV has

enacted policies and procedures designed to treat CLECs fairly as contemplated by the Telecommunications Act of 1996. When Verizon-WV's actual practices and performance are examined under scrutiny, it will become evident that the emperor has no clothes.

II. Verizon-WV's Continued Use of GRIPs Violates Checklist Item 1

Verizon-WV does not provide interconnection arrangements to CLECs in order to arrange for interconnection points that provides for the proper arrangement for traffic transport. In order to interconnect with Verizon-WV, CLECs are permitted to physically connect their networks to Verizon-WV for the transmission and routing of telephone exchange service and exchange access at 1) any point that is technically feasible, 2) that is at least equal in quality to that provided by the local exchange carrier to itself; and 3) on rates, terms and conditions that are just, reasonable, and non-discriminatory.[1] At the point of interconnection, the traffic of the originating party must ride over the network of the receiving party in order to complete the call. Under Verizon-WV's current interpretation of its interconnection obligations, Verizon-WV can order transport services over a CLEC's network to complete and terminate Verizon-WV originated calls, but Verizon-WV refuses to compensate CLECs for this same service. At the same time, Verizon-WV insists that CLECs compensate Verizon-WV for the transport of CLEC originated calls.

Verizon-WV has a clear strategy that is designed to manipulate the rules for interconnection networks and paying reciprocal compensation so as to drive up the costs to competitors. One way this occurs is to force competitors to build networks to Verizon-WV's end offices to physically interconnect with Verizon-WV's network, and then insist

that that is where Verizon-WV's financial responsibility ends and the competitor's financial responsibility begins. This is Verizon-WV's Geographically Relevant Interconnection Point ("GRIPs") strategy. Verizon-WV's intent in this scheme is to force the competitor to incur the costs to build and then doubly incur the costs to give Verizon-WV a free ride over the point where the networks are physically interconnected. Verizon-WV will insist that its Interconnection Point ("IP") is the point where Verizon-WV may wash its hands from any financial responsibility for the further transport of its traffic. In FiberNet's view, this represents a distortion from what the law requires at the physical points of interconnection and the use of each other's network.

Under long standing practice in the industry, and under the applicable rules of the Federal Communications Commission ("FCC"), Verizon-WV, as the originating carrier, is financially responsible for arranging for the transport of its traffic to an end user, either through building its own facilities or leasing the capacity of another carrier, such as a CLEC. Under the aforementioned GRIPs policy, however, Verizon-WV seeks to avoid these financial obligations. On the other hand, a CLEC would be required to order these same transport services from Verizon-WV, is billed by Verizon-WV, and Verizon-WV demands payment for the same services that it refuses to compensate CLECs for under its GRIPs policy.

The Commission cannot simply ignore the issues surrounding Verizon-WV's GRIPs policy during its evaluation of Verizon-WV's Application. Rather, they go to the very heart of Verizon-WV's compliance with the explicit requirements of the Act and the FCC's regulations implementing those statutory directives. Because Verizon-WV has not, and in fact cannot, demonstrate that it is meeting the letter and intent of those

[1] See 47 U.S.C. Section 251 (c)(2)(A)-(D)

directives because of its GRIPs demands, it categorically fails to satisfy the obligations of Checklist Item 1.

Indeed, FiberNet's views in this regard are supported up by the decision recently issued by the FCC covering the non-cost issues involved in the Virginia arbitration proceeding initiated by AT&T, Cox Communications and WorldCom. In this proceeding, the FCC expressly rejected Verizon's GRIPs and VGRIPs interconnection proposal. In the Virginia Arbitration Order, the FCC found that Verizon's GRIPs and VGRIPs proposals were inconsistent with the Act and should be rejected:[2]

> Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for Section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.

Thus, the issues surrounding GRIPs cannot simply be passed off as a bilateral dispute over interconnection agreement language as Verizon-WV seeks to do. Rather, Verizon-WV's continued use of GRIPs in West Virginia goes to the very core of Verizon-WV's compliance with the express requirements of the Act, and of the precedent

[2] *See Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission,* CC Docket Nos. 00-218, 00-249 and 00-251, Memorandum Opinion and Order, DA-02-1731 (rel. July 17, 2002) (*Virginia Arbitration Order)* at Paragraph 53.

just recently set by the FCC in the aforementioned Virginia Arbitration Order. The essence of Verizon-WV's GRIPs scheme is a fiction that has no basis in the Telecommunications Act or FCC rules. Verizon-WV has fabricated a distinction between a POI and what it terms an "interconnection point" ("IP"). Verizon-WV then treats the POI as the location where the parties' facilities *physically* interconnect, but uses its own creation -- the "IP"-- as the location where the carriers' *financial* responsibilities begin and end, *i.e.*, where reciprocal compensation begins, or where the originating carrier delivers its traffic for termination. Neither the Act nor the FCC's rules or decisions sustain this artificial distinction between the POI and the IP. In fact, the Act and the FCC's decisions use the terms "interconnection point" and "point of interconnection" interchangeably.

Verizon-WV claims that it is in compliance with the law and the FCC's *Virginia Arbitration Order*, citing to its newly revised October 25, 2002, Model Interconnection Agreement that purportedly reflects the rulings in the *Virginia Arbitration Order*. Indeed, Verizon-WV witnesses claimed on the record in the underlying West Virginia state proceeding that its Model Interconnection Agreement did not include the objectionable GRIPs provisions.[3] However, the interconnection language in the Model Interconnection Agreement is essentially indistinguishable from the provisions that the FCC found to be unacceptable in the *Virginia Arbitration Order*. Indeed, it is essentially GRIPs without the GRIPs moniker, as is made plain by a careful review of its provisions.

For example, Section 66.2.4 of Verizon-WV's Model Interconnection Agreement requires a CLEC to interconnect at "each Verizon tandem in a LATA" that subtends Verizon end offices to which a CLEC sends calls for Verizon to terminate. In contrast,

the FCC rules provide that interconnection can be at a single point in a LATA. Similarly, Section 66.2.5 of the Verizon-WV Model Interconnection Agreement requires interconnection at each Verizon end office at which the volume of traffic exceeds the equivalent of one DS-1 and/or 200,000 minutes of use in a single month. In contrast, the Virginia Arbitration provisions mandated by the FCC have no such mandatory end office interconnection requirement.[4]

Section 66.2.6 of the Verizon-WV Model Interconnection Agreement limits the number of trunks between a CLEC POI and a Verizon tandem switch to 240 at any time, forcing establishment of trunks to Verizon end offices whenever that magic number is exceeded. Again, the Virginia Arbitration provisions mandated by the FCC have no such mandatory end office interconnection requirement.[5] Likewise, Section 65 of the Verizon-WV Model Interconnection Agreement makes it clear that a technically feasible POI must be "on Verizon's network," and can never be a CLEC wire center, switch or transport facility. In contrast, the Virginia Arbitration provisions mandated by the FCC call for interconnection at the CLEC switch, in the absence of an agreement to the contrary.[6]

Based upon the evidence in this case, Verizon-WV has not demonstrated that it is meeting the letter and the spirit of the Act because it retains GRIPs provisions in currently effective interconnection agreements in West Virginia as well as continues to press GRIPs demands in current interconnection agreement negotiations. Consequently, unless and until Verizon-WV agrees to promptly remove GRIPs provisions from existing

[3] Case No. 02-0809-T-P, Transcript of Hearings on November 8, 2002, at p. 239.
[4] *Virginia Arbitration Order* at Paragraph 53.
[5] Id.
[6] Id.

West Virginia interconnection agreements, and ceases to insist on GRIPS proposals in current and future interconnection agreement negotiations with CLECs in West Virginia, the Commission cannot at this time render a finding that Verizon-WV is in current compliance with Checklist Item 1. FiberNet would therefore request that the Commission reiterate its findings from the Virginia Arbitration proceeding and reject Verizon-WV's GRIPs policy as being inconsistent with the requirements of Checklist Item 1.

III. Verizon-WV Has Not Demonstrated Compliance with Checklist Items 2, 4 or 5

Competitive Checklist Item 2 requires that Verizon-WV demonstrate that it is providing nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). Similarly, Checklist Item 4 requires Verizon-WV to demonstrate that it is providing access to unbundled loops. Moreover, Section 252(d)(1) of the Act requires that Verizon-WV price unbundled network elements at cost-based rates. Verizon-WV does not currently meet any of these requirements. Quite the contrary, Verizon-WV rejects a disproportionate number of FiberNet's UNE DS-1 loop orders on the grounds that it allegedly has "no facilities" available to fill these orders. Verizon-WV's practice in this regard forces FiberNet to either inform its customers that it cannot provide services as anticipated or, alternatively, to purchase equivalent facilities out of Verizon-WV's special access tariffs at rates that are significantly higher than the cost-based rates necessary to satisfy Verizon-WV's obligations under the competitive checklist.

FiberNet, like many other CLECs, is dependent on Verizon-WV to provide the "last mile" loop facilities it requires to reach its end user customers. Since its customer

base is composed primarily of small and medium size business customers, FiberNet oftentimes utilizes high capacity facilities like DS-1 and DS-3s to provide service to these customers. However, Verizon-WV rejects approximately 50% of FiberNet's UNE DS-1 service orders claiming that it has "no facilities" available to fill FiberNet's orders. Specifically, through September, 2002, FiberNet had attempted to place 191 orders with Verizon-WV for UNE DS-1 facilities. Of these 191 orders, Verizon-WV rejected 95 of them on account of "no facilities."

Similarly, in testimony before the Public Service Commission of West Virginia ("PSCWV"), Gateway Telecom, Inc. d/b/a, StratusWave, another small CLEC operating in West Virginia, testified that it experienced a rejection rate of approximately 35% on its UNE DS-1 orders.[7] This high rejection rate on UNE DS-1 orders is especially significant given the fact that very few CLECs are even placing UNE DS-1 orders with Verizon-WV today. If Verizon-WV cannot adequately provision UNE DS-1 at present volumes, how in the world can it hope to adequately provision UNE DS-1 orders in a post-Section 271 environment wherein local exchange competition in West Virginia, at least according to Verizon-WV's rhetoric, will likely increase?

Verizon-WV rejects UNE DS-1 orders due to "no facilities" for any of the following reasons:

- There is no repeater shelf in the Central Office or customer location or remote terminal.
- There is no apparatus/doubler case available.
- There is a need to place fiber and/or a multiplexer to fulfill the order.

[7] See Case No. 02-0809-T-P, Prefiled Testimony of Howard R. Irvin III on Behalf of Gateway Telecom LLC, d/b/a, StratusWave Communications, October 28, 2002, at page 7.

- There is a need to adjust the multiplexer to increase capacity.
- There is no riser cable or buried drop wire if a trench or conduit is not provided.
- The copper cable is defective, and there are no spares available; Verizon would need to place cable (fiber or copper) for spares.

Significantly, Verizon-WV does not reject DS-1 orders it receives from its retail end users under these same circumstances, and in fact, routinely undertakes the minor upgrades necessary to make DS-1s available to its own end user customers, rather than to reject these orders. Further, at least two of the "no facilities" circumstances that Verizon-WV cites to reject UNE DS-1 orders -- no repeater shelf and no apparatus/doubler case – involve relatively minor adjustments that can be remedied without construction and for a modest amount of money. Because of the extremely negative impact the inability to obtain reliable access to UNE DS-1s has on FiberNet's business operations, FiberNet has even offered to pay the non-recurring cost of the repeater shelf or the apparatus/doubler case, but Verizon-WV has rejected this reasonable proposal. Consequently, Verizon-WV's steadfast refusal to accord FiberNet and other CLECs in West Virginia comparable treatment when it comes to UNE DS-1 orders is discriminatory on its face, and effectively deprives FiberNet and other CLECs of the ability to offer their own customers a competitive service.

If FiberNet is unable to order a UNE DS-1 from Verizon-WV, FiberNet is required to either (1) wait some indeterminate period of time until the facility is available; (2) cancel the order and resubmit it at a later date when and if facilities may be available; or (3) reorder the identical facility as special access, at a much higher rate because unlike UNE DS-1s, Verizon-WV will do "construction" for special access DS-1 orders. None

of these options is truly acceptable. Under the first two options, FiberNet is put in the position of having to inform its customer that it has no idea when or if it can deliver the service the customer ordered because of the inability to get a commitment date from Verizon-WV as to when a UNE DS-1 facility will be available. Under the last option, FiberNet is able to obtain a special access circuit that it can use to deliver its service to the involved customer in a timely manner, but FiberNet is forced to pay Verizon-WV significantly higher recurring and nonrecurring rates for the special access circuit than it would otherwise pay for the identical UNE DS-1 facility.[8] FiberNet frequently has no real alternative but to order the special access facility and pay the higher rates, especially if it wants to honor a commitment made to its customers in a timely manner.

Moreover, Verizon-WV's requirement that FiberNet cancel the UNE DS-1 order and resubmit a special access order increases the installation interval, and thereby delays initiation of service to the FiberNet customer. For instance, if FiberNet initially submits the order as a UNE order, and no such facilities are available, then FiberNet must start over again by submitting an access order, thereby initiating the provisioning interval a second time.

Thus, not only are the special access rates higher than the UNE rates, but FiberNet and its customer suffer a delay in the installation of the facility. Verizon-WV implies that this delay – which in FiberNet's experience could be as long as two months – is justified because "construction" is allegedly taking place. But there is no evidence to indicate that Verizon-WV's retail sales organization and its customers suffer similar delays, and plenty of reason to believe that they do not. The important point here is that the delay should

[8] The monthly recurring UNE rates in Density Cell 1 in West Virginia are $113.89 for a DS-1, while the monthly recurring special access rate being billed to FiberNet is $293.06 per DS-1.

not be any greater for FiberNet and its customer than for Verizon-WV and its customer. The Telecommunications Act requires no less.

In the recent Virginia Section 271 proceeding, the Hearing Examiner found, "Verizon Virginia's policy has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry accounting rules, and is inconsistent with TELRIC pricing principles."[9] In the underlying West Virginia Section 271 proceeding, the West Virginia Public Service Commission Staff stated that "Verizon's no facilities policy significantly, and adversely, affects the local service being provided by CLECs in West Virginia."[10] More specifically, the West Virginia Public Service Commission Staff stated:

> "The policy, and its application, on its face, appears anti-competitive and and discriminatory. Anti-competitive, because it drives up competitors' costs to provide service, often significantly delays CLECs in obtaining facilities to serve their customers, and allows the "special access" facilities over which CLECs are forced to accept to be provisioned and serviced outside of any performance metrics, [and] repaired without any objective standard interval. Discriminatory because Verizon-WV does not suffer from the same handicaps in its retail service operations."[11]

In short, the current process employed by Verizon-WV is pure and simple discrimination – discrimination that is not permitted under the Act – because it is obvious that Verizon-WV would not refuse to provision retail customer orders submitted by its retail sales organization because of tortured claims of "no facilities." Orders placed by Verizon-WV's wholesale customers like FiberNet are too often rejected rather than filled, and then FiberNet is subjected to the burdensome process outlined above that Verizon-

[9] See In the Matter of Verizon Virginia, Inc., Report of Alexander F. Skirpan, Jr., Hearing Examiner, Case No. PUC-2002-00046 (July 12, 2002), at 116.
[10] See Case No. 02-0809-T-P, Verizon West Virginia, Inc., Commission Staff's Post-Hearing Brief, at p. 33.

WV does not subject itself to. Thus, FiberNet -- and FiberNet's customers -- do not have nondiscriminatory access to DS-1 and other hi-cap facilities. This is harmful to the deployment of facilities-based competition in West Virginia, and particularly to the development of facilities competition to economically sparser areas, impeding expansion into rural and residential markets in West Virginia.

A. Expanded Extended Loops

FiberNet has also had a difficult time ordering Expanded Extended Loops or EELs from Verizon-WV. Essentially, an EEL consists of a combination of unbundled loops and unbundled interoffice transport with or without multiplexing, and is used to provide a significant amount of local exchange service to an end-user. It is offered to and of benefit to CLECs that purchase unbundled loops, but do not want to collocate in each end office serving those loops.

Although EELs were available in other jurisdictions within the Verizon footprint, they were not available to CLECs in West Virginia as a UNE. In order to procure an EEL from Verizon-WV historically, FiberNet had to order a special access circuit and then subsequently convert that circuit to an EEL. It was never really made clear to FiberNet why EELs could not historically be ordered in West Virginia as an UNE, but that became a moot point when the United States Supreme Court recently held that Verizon had to make EELs available to CLECs as a UNE.[12]

While the Supreme Court's decision should have marked the end of the story, it was unfortunately on the beginning for FiberNet in West Virginia. Initially, FiberNet

[11] See Case No. 02-0809-T-P, Verizon West Virginia, Inc., Commission Staff's Post-Hearing Brief, at p. 35.
[12] Verizon Communications, Inc. v. Federal Communications Commission, No. 00-511, Slip Opinion, May 13, 2002.

was told by Verizon-WV that EELs as UNEs would be available in West Virginia, but Verizon-WV was unable to give a definitive date. Subsequently, FiberNet was told that EELs were available to be ordered as UNEs in West Virginia as of August 21, 2002. Following that pronouncement by Verizon-WV, FiberNet attempted to place several EEL UNE orders with Verizon-WV only to have those orders rejected by Verizon-WV on the basis that EEL UNEs could not be ordered in West Virginia.

When this issue was raised during the workshops held before the evidentiary hearings in the West Virginia Section 271, Verizon-WV indicated that FiberNet's EEL orders should not have been rejected on that basis. The Verizon-WV wholesale representatives agreed to investigate the matter. Subsequently, on October 4, 2002, Verizon-WV informed FiberNet via e-mail that although FiberNet's EEL orders should not have been refused initially, they were still being rejected by Verizon-WV on account of "no facilities." What good then are EEL UNEs if CLECs can never order them as UNEs?

Verizon-WV's apparent inability to accept and provision FiberNet's EEL orders is but another indication of Verizon-WV's non-compliance with Item 2 of the competitive checklist. Until Verizon-WV has clearly demonstrated an ability to accept, confirm and provision CLEC orders for UNE EELs in West Virginia, it should not be granted Section 271 in-region long distance operating authority.

In addition to the problems FiberNet has encountered with simply getting Verizon-WV to accept its EEL orders, Verizon-WV's choice of OSS for the ordering of new EELs burdens CLECs like FiberNet with unreasonable costs and delays. Typically, an EEL consists of a combination of an interoffice facility ("IOF"), a loop or loops, and a

multiplexer ("mux") if the IOF and the loops are of different speeds. If the IOF and the loops are of different speeds, Verizon-WV requires two separate orders, and therefore two separate order charges are applied. Moreover, Verizon-WV requires that these orders for the IOF and the loops be sequential. In other words, the IOF order must be completed and turned up before the corresponding loops can be ordered.[13]

The problem with this process is that Verizon-WV begins charging for the IOF as soon as it is turned up, even though the loops have not yet been ordered or provisioned. The intervals for loop provisioning may be as long as 15 days, depending on the type of loop and the quantity ordered, assuming that the loop facility is available in the first place, which in FiberNet's recent experience is often not the case. If the facility is not available, the order is rejected, but the charges for the associated IOF continue to be assessed. As a result, the CLEC incurs IOF charges long before it can actually use the EEL to obtain revenue from its customer.

Moreover, FiberNet has been unable to reuse a customer's existing loop or loops for EEL orders. Rather, spare loops must be available to the customer's location. If there is no spare facility, the order is rejected. Even if there is a spare, it may require a field dispatch to, for example, connect a second line to a NID. Naturally, the field dispatch would be at the CLEC's expense. In the interim, the CLEC continues to incur the charges for the turned up but idle IOF.

In sum, the current Verizon-WV EEL ordering process and the OSS supporting it is unwieldy and expensive for CLECs. As has been noted above, the CLEC incurs multiple charges for facilities in a piecemeal fashion, and it incurs them long before it can actually make use of the EEL in order to obtain revenue from its customer. Similarly, the

[13] Verizon CLEC Handbook, Volume 3, 2.12.

failure to reuse existing loops to a customer's location heightens the possibility that the CLEC will not be able to serve the customer in a timely manner using an EEL. When these deficiencies are combined, it is patently clear that Verizon-WV's current system is discriminatory and needs to be fixed prior to Section 271 approval. Specifically, the ordering process for EELs must be fixed so that: 1) ordering of IOFs and loops are coordinated rather than sequential; 2) the IOF charges begin only when the entire assembly of IOF, loops and mux are turned up and available to the CLEC; and 3) existing loops to a customer's location are reused.

B. M-Loops and Facility Reuse

During the course of the underlying state Section 271 Proceeding, Verizon-WV committed to working constructively with FiberNet on a process involving the reuse of existing resale loops or Verizon retail loops when said loops were converted by FiberNet to voice grade EEL M-loops.[14] Specifically, Verizon-WV expressly committed to develop a process so that such a move could be accomplished as a coordinated hot-cut.[15] Over the last several months, FiberNet personnel have participated in multiple conference calls with Verizon-WV representatives to establish the new process and testing. However, Verizon-WV continues to backslide from its initial commitment by imposing substantial limitations and requirements that are arbitrary, unreasonable and reflective of Verizon-WV's anti-competitive behavior.

Since the conclusion of the state Section 271 hearing held November 6-8, 2002, Verizon-WV has informed FiberNet of the adoption of a 13-day interval for order completion of M-Loops that reuse the existing facility from Verizon-WV's wire center to

[14] See "Notes from Verizon 271 Workshop regarding Availability of Facilities and Miscellaneous Issues", September 25, 2002, Section 3, I.E.

FiberNet's end user. This policy change was first presented to FiberNet during a conference call that was held on December 9, 2002. Previously, FiberNet was instructed by Verizon-WV that 8 days would be the time required for order completion. The normal time interval for a loop and number port ("LNP") on POTS lines is 6 days from order entry to completion, thus the 13-day interval (or even the 8-day interval) is unusually lengthy and burdensome.

The additional time now being required by Verizon-WV will essentially destroy FiberNet's planned resale to M-Loop conversion schedule. At the outset of this process, FiberNet established a schedule to meet its goal to have all existing resale lines converted to M-Loops by the beginning of 2003. In this regard, FiberNet has approximately 1000 lines ready to be converted, but due to Verizon-WV's unreasonable provisioning interval, FiberNet will not only be unable to meet its desired conversion schedule, but it will also be perpetually backlogged on a prospective basis. This is especially significant due to the substantial cost FiberNet incurs while maintaining loops on resale as opposed to converting these loops to on-net M-Loops. As a result, any delay encountered during the conversion process for these loops works to FiberNet's financial detriment.

In addition to the unreasonable provisioning delay, Verizon-WV is limiting the number of conversions it will process per day, which is likewise arbitrary and unreasonable. Verizon-WV initially informed FiberNet that it would process only 8 lines per day. During a conference call on December 13, 2002, Verizon-WV stated it would allow up to 15 conversions per day, however, the additional 7 conversions must be from a different central office than first 8 conversions. The aforementioned order completion interval of 13 days coupled with Verizon-WV's decision to greatly limit the number of

[15] See Checklist Rebuttal on Behalf of Verizon West Virginia, Inc., Paragraphs 94-95.

lines that can be processed per day will extend FiberNet's schedule for completion of this M-Loop conversion project to the middle of 2003, resulting in substantial additional costs to FiberNet. This is completely unfair to FiberNet and is an unacceptable anti-competitive action by Verizon-WV.

In order to facilitate the conversion process, FiberNet previously provided to Verizon-WV all of the central office locations with the corresponding number of lines involved in order to allow Verizon-WV to properly schedule any equipment additions for these offices. The aforementioned conversion delay for these M-Loops is apparently due to the lack of channel bank cards that need to be shipped to these central offices.[16] Since FiberNet provided to Verizon-WV in advance detailed information on the number of lines in each central office that needed to be equipped in order to accommodate the conversion process, a 13 day lag time to successfully complete the processing of each FiberNet order is unreasonable.

Also during the earlier mentioned December 9, 2002 conference call, FiberNet discovered that the cards that needed to be shipped are the same cards that are currently causing FiberNet customers to experience slow modem speed, an issue which FiberNet raised and provided information concerning during the workshops held in this matter. To date, the slow modem speed situation has been resolved on only one circuit. The resolution was replacement of the same channel bank cards that will apparently be used on these M-Loops with cards produced by a different manufacturer. Given this fact, it is highly likely that the installation of the troublesome cards in FiberNet's M-Loops will

[16] The reasons for this conversion delay were discussed with Verizon-WV personnel during a December 9, 2002, conference call. as discussed during a conference call with Mary McNabb, Susan Fox, and Ann Linnea Terranova of Verizon on December 9, 2002

potentially cause the same trouble condition on circuits where a customer may have a dial up modem in service.

It is inevitable that such a dumbfounding action by Verizon-WV will force FiberNet to generate numerous trouble tickets and go through the same time consuming and agonizing process it must repeatedly and continuously go through to obtain from Verizon-WV parity service for its customers. Verizon-WV's behavior of using cards that Verizon-WV already knows will cause slow modem speed, and essentially provide degraded service when connected to an M-Loop[17] is nothing but anticompetitive, resulting in the provision of inferior service to FiberNet.

FiberNet is also experiencing continuous, unreasonable delays from Verizon-WV on other similar orders. During a conference call on September 23, 2002, Verizon-WV asked FiberNet to provide information concerning two of its orders for backbone with multiplexing. FiberNet sent via e-mail detailed information on the loops FiberNet would be ordering to its customers. This information was organized by channel on the involved T-1, name of the customer, telephone number, and what local service provider presently was providing service. The two T-1's are located in Hurricane and Vienna and have a total of 48 circuits (24 channels for each T-1). As of December 18, 2002, only nine of the 48 customers for whom FiberNet had ordered service have been connected to these T-1's.

On October 18, 2002, FiberNet provided, as requested, all the T-1 information to complete all of its backbone T-1 orders. Thereafter, when nothing had occurred, on November 17, 2002, Karen Whittard, FiberNet's Provisioning Manager, sent an e-mail to Mary McNabb, the Verizon account manager assigned to FiberNet, to inquire as to why it

[17] See, Notes from Verizon 271 Workshop, Follow-up on Open Issues and Pre-Hearing, October 4, 2002, Section C. 1.

was taking so long to process these T-1 orders. Because Verizon-WV had apparently not taken any action to process the orders, FiberNet again provided the detailed line information by central office on November 20, 2002, with supplemental lists following every other day. In light of these continued problems in processing FiberNet's orders, it is FiberNet's opinion that Verizon-WV is totally indifferent insofar as the completion of FiberNet's orders is concerned.

Despite Verizon-WV's assurances that this M-Loop conversion process would be in place in a relatively short period of time, the time interval between the conference call that initially established this M-Loop conversion procedure, and the processing of FiberNet's first order, has been adversely excessive. FiberNet has seen this process regress substantially during the past several weeks, and the latest change to the time interval required clearly demonstrates that Verizon-WV is back sliding on the commitments it made during the underlying state regulatory proceeding in this case. Verizon-WV's actions in this particular ordering process are the same actions that FiberNet repeatedly sees in its dealings with Verizon-WV, i.e. arbitrary additional and new requirements, "operational" requirements that delay the provision of service to FiberNet customers, and slow response time on issues raised by FiberNet.

C. Dark Fiber

Checklist Item 4 (local loops) and Checklist Item 5 (local transport) obligate Verizon-WV to make dark fiber available to CLECs in the same manner as Verizon-WV is able to utilize such fiber itself, *i.e.*, on nondiscriminatory terms and conditions at technically feasible points. Verizon-WV's policies and practices concerning dark fiber, however, do not demonstrate that it complies with these two checklist items.

The issue of dark fiber and its availability to CLECs has been a contentious point between Verizon and the CLECs ever since the FCC made dark fiber a UNE in the 1999 *UNE Remand Order*. In fact, Verizon opposed the designation of dark fiber as an UNE before the FCC. Having lost that battle, Verizon is still working to frustrate the CLECs' use of dark fiber.

In their prepared testimony, FiberNet Panel Witnesses Jack Wade, Karen Whittard and Daniel Scoville described a series of problems regarding Verizon-WV's dark fiber practices and policies.[18] For example, Verizon-WV does not make available to CLECs the necessary tools to construct a network overview of available fiber. As a result, CLECs often are must go through fruitless searches for available fiber armed with inadequate information and terminating in frustration. In short, Verizon-WV's current dark fiber ordering process is a virtual dark hole in that the procedures are so unclear that a CLEC like FiberNet has no idea if there is any chance of success when placing an order for dark fiber.[19]

However, it does not have to be this way. During the processing of Verizon-WV's Section 271 Application at the state level, the FCC in the *Virginia Arbitration Order* resolved a number of non-price issues, including dark fiber. Unfortunately, Verizon-WV is apparently not willing to commit to specific terms and conditions on dark fiber as part of a general offering. Instead, Verizon-WV indicated that it has revised its Model Interconnection Agreement to incorporate revised dark fiber terms and conditions.

[18] FiberNet Exhibit No. 1, Panel Testimony of Jack Wade, Karen Whittard and Daniel Scoville on behalf of FiberNet, LLC, at pp 31-41.

[19] FiberNet has to date attempted to place three orders with Verizon-WV for Dark Fiber UNEs. All three of FiberNet's Dark Fiber UNE orders were rejected by Verizon-WV on account of "no facilities." With the prospects for successfully ordering dark fiber so unlikely, FiberNet has basically given up on even attempting to place dark fiber UNE orders with Verizon-WV.

Thus, Verizon-WV has offered its own interpretation on dark fiber as a starting point to interconnection agreement negotiations between the parties.

Obviously, there are several problems with Verizon-WV's proposed approach. First, a carrier would not gain the benefit of the FCC's resolution of the dark fiber issue unless it happened to be in the midst of interconnection agreement negotiations. Moreover, the Model Interconnection Agreement language is merely an opening offer in the course of negotiations; its terms and conditions have not been approved by any state regulatory commission, including the PSCWV, and it is not binding on any party. To the extent that a party disagreed with Verizon's proposed language – language not approved by the PSCWV or the FCC – it might still be required to engage in a full arbitration proceeding at the state level.

Thus, unless and until Verizon-WV is required to offer the same dark fiber terms and conditions in West Virginia as the FCC adopted in the Virginia arbitration, it cannot be deemed to be in compliance with either Checklist Item 4 or 5. If Verizon-WV chose to proactively make these new dark fiber terms generally available, instead of merely being satisfied with making revisions to its Model Interconnection Agreement, CLECs could immediately take advantage of the more favorable terms and conditions associated with dark fiber.[20] This simple solution would certainly help fix, although not totally alleviate, Verizon-WV's broken dark fiber process. Existing Verizon-WV procedures for providing dark fiber information are woefully inefficient, discriminatory, and are ripe for abuse. Indeed, Verizon-WV has indicated in response to a FiberNet discovery request that it has not provided a single dark fiber UNE in West Virginia to date. Simply stated,

[20] CLECs would not have to wait until modifying its interconnection agreement before getting the benefits of the new language. As such, the potential for prohibitive litigation costs could be avoided.

to use dark fiber, competitive carriers must know where it is, and Verizon-WV's current dark fiber ordering processes and procedures simply do not allow for that to occur.

The basic conclusion here is that Verizon-WV's dark fiber process is broken, and has been broken for quite some time in West Virginia. While Verizon-WV will undoubtedly attempt to downplay the concerns raised with respect to dark fiber, the Commission should not be persuaded by Verizon-WV promises to fix the situation on a prospective basis or be satisfied with vague promises to revise language in its Model Interconnection Agreement. Make no mistake, Verizon-WV has no incentive to fix the dark fiber process in a timely manner because to do so would allow CLECs to compete with Verizon-WV on a more level playing field. However, until the dark fiber process is addressed and significant changes thereto are implemented by the Commission, Verizon-WV's Section 271 Application should not be approved.

IV. Verizon-WV's OSS Is Not Yet Ready

Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.[21] The FCC consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[22] For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.[23] The FCC has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely

[21] *Id*. at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.
[22] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.
[23] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.[24]

In analyzing whether Verizon-WV is providing adequate OSS access, the Commission must analyze each of the primary OSS functions – pre-ordering, ordering, provisioning, maintenance and repair, and billing. For a CLEC to operate effectively, access to Verizon-WV's OSS is critical to order and provision the customer's service to a CLEC, especially when the customer is on a Verizon-WV loop. FiberNet is provided with Verizon-WV's current version of its web based graphic user interface or Web GUI. This OSS system is replete with errors, flaws and other significant deficiencies that effectively deny FiberNet with reasonable access to these interface systems in a workable and meaningful way.

The Web GUI used by FiberNet often operates too slowly to be used. This occurs on a daily basis, usually around 3 pm EST. During these periods in which the Web GUI is slow, the entire FiberNet assignment department cannot perform its work in an efficient or timely manner. On October 14, 2002, for example, the Web GUI went down completely for most of the day thereby preventing FiberNet from placing its orders with Verizon-WV. Most recently, on October 21, 2002, Verizon-WV changed its Web GUI Internet address. However, FiberNet was not able to access the Web GUI at the new address provided by Verizon-WV. Also, the User Guide provided by Verizon-WV related to the old Internet address, but FiberNet was not able to access the Web GUI using the old Internet address because said address was no longer recognized. FiberNet was only able to gain access to the Web GUI by using an old link that had not been blocked by Verizon-WV. It is truly amazing that Verizon-WV made this particular

[24] *Id.*

change to the Web GUI address with so many problems unresolved. Needless to say, the problems associated with the Web GUI are enormously disruptive for FiberNet and inhibit FiberNet's ability to provide service to its customers in an efficient and cost-effective manner.

FiberNet regularly experiences a host of OSS related issues. All of these problems share a common theme: The data and information is in Verizon-WV's possession, the involved systems are of its design. Yet, FiberNet must literally pull its hair out to uncover the Verizon-WV generated problem, escalate the problem, and press continuously for a proper resolution. In the interim, FiberNet must incur extra costs and employee time to hopefully get to the bottom of these problems. These problems seem to change over time, but at present can be summarized as follows:

- Incomplete Firm Order Confirmations or FOCs;
- Endless Escalations of Problems;
- Lack of Coordination Among Verizon-WV's Various Wholesale Departments;
- Missing ALI Codes;
- Premature Disconnections;
- Ordering New Services.

"Incomplete FOCs" – Verizon-WV's Web GUI provides information on any given order with respect to the status of that order as it moves through the various stages of entry to final installation. Verizon-WV is supposed to provide FOCs for all CLEC orders within either 24, 48 or 72 hours depending on the nature of the underlying order. However, when Verizon-WV returns a firm order confirmation it is oftentimes missing

critical information. Since FiberNet relies upon these FOCs for verification of its orders, if the FOC does not contain all of the necessary information, FiberNet is forced to call the National Market Center ("NMC") in an effort to properly verify its order.

In a related situation, the FOC is correct for FiberNet's order, but the Verizon-WV order is incorrect or has data missing. For example, FiberNet is still receiving orders from Verizon-WV in which customer telephone number and directory listing information is missing. This obviously causes a delay in getting a customer's service installed. This also causes some customers to be improperly put out-of-service.

It also bears noting that FiberNet is finding this situation to be the most prevalent in its larger or so-called complex orders. As a general matter, an order is considered a complex order if it involves a customer with 10 lines or more. Since complex orders are placed for larger customer migrations, errors or delays attributed to information missing from FOCs is especially harmful to FiberNet. At present, situations involving information missing from FOCs occurs on approximately 12-14 orders per week.

"Endless Escalation of Problems" -- FiberNet must routinely escalate a large number of issues with Verizon-WV. These escalations arise for a number of reasons and include: (1) orders being stuck in "acknowledgement" (acknowledged by Verizon-WV, but not being worked by Verizon-WV), (2) "provisioned complete, no query" orders which are listed by Verizon-WV as complete but have not been released to FiberNet, (3) orders generating ESOI errors, indicating a problem between different groups within Verizon-WV, or (4) orders generating false or bogus queries, including some queries related to the busy or missing CFA issues that we describe below.

"Lack of Coordination Among Verizon-WV's Various Wholesale Departments" -- FiberNet must frequently contact different organizations within Verizon-WV's wholesale beauracacy in order to resolve a problem. Typically, FiberNet must contact the WCCC, NMC, RCCC, and RCMC before resolving an issue, because one Verizon-WV wholesale organization will direct FiberNet to the other, that one will direct FiberNet to a third organization or back to the first one, and so on. Sometimes, FiberNet must contact two or more groups multiple times. FiberNet does not track the occasions when this lack of coordination occurs, but it happens frequently and has unfortunately become an accepted part of dealing with Verizon-WV on ordering and provisioning matters. FiberNet believes that these different groups within Verizon-WV, not FiberNet, should coordinate efforts among themselves.

"Missing ALI Codes" – FiberNet recently converted to a new ordering format – LSOG 4. Prior to conversion to LSOG 4, FiberNet used LSOG 3. For Directory and Directory Assistance orders, LSOG 4 required that a new field be populated that was not required in LSOG 3. That new field required that FiberNet populated an "ALI" code for every order. An ALI code is a code assigned by Verizon-WV that identifies the actual access line for directory listings purposes, and is particularly important in one location with many numbers assigned. It is a Verizon-WV code using Verizon-WV assigned nomenclature. FiberNet does not have this information, and is not provided this information in the Web GUI at the relevant time when the order is placed initially. The order is rejected, and FiberNet has to request the Verizon-WV ALI code in order to do Verizon-WV's job to add the Verizon-WV code back into the order.

"Premature Disconnections" -- Before the customer is ready to cut over to FiberNet's service, Verizon-WV unexpectedly disconnects the customer. Premature disconnections unfortunately continue to be a problem for FiberNet. In FiberNet's opinion, a premature disconnect should never occur. When a premature disconnect inevitably does occur, however, it causes enormous disruption for FiberNet and the involved customer, and it still requires a lot of time and resources from FiberNet to address a problem caused solely by Verizon-WV. Yet, as is the case with respect to many of these Verizon-WV OSS related difficulties, customers still blame FiberNet for the problem when it occurs.

"Ordering New Services" – FiberNet has had difficulty in ordering new service offerings from Verizon-WV. Examples of these include EELs, OC-3s, ATM ports, T-1 Mux, and the M-Loop. In each of these instances, FiberNet experiences delays in being able to provide service to its end user customer. For example, it literally took FiberNet six months to successfully order and provision an OC-3 from Verizon-WV. As we have discussed previously, the customer service records that FiberNet relies upon in ordering these services from Verizon-WV are often incorrect or missing critical pieces of information. Location groups are missing, line information is incorrect, and the information FiberNet does receive is outdated in many instances. The information contained in the Web GUI does not match the hard copy that we receive from Verizon-WV. Consequently, it oftentimes takes months, not days, to get our orders processed by Verizon-WV.

Verizon-WV's Trouble Ticketing Process is Broken

In an effort to remedy these reoccurring OSS problems, FiberNet attempted to open trouble tickets with Verizon-WV, but unfortunately, FiberNet found that the trouble

ticketing process was not an effective tool in getting OSS problems resolved in a timely manner. While FiberNet waited for Verizon-WV to address its trouble tickets, FiberNet was not able to get services turned up to its customers in a timely fashion. In fact, FiberNet has actually lost potential customers who quite simply got tired of waiting on FiberNet to resolve its problems with Verizon-WV. As a result, FiberNet simply started to work around Verizon-WV OSS problems internally whenever possible, or when an internal work around was not possible, FiberNet started telephoning the various Verizon-WV wholesale organizations directly in order to get these problems resolved in a timely manner. FiberNet found this approach, while still unsatisfactorily and time consuming, to be more effective in getting critical OSS problems remedied.

During the OSS workshop that was held on September 16, 2002, FiberNet was advised by Verizon-WV to begin opening trouble tickets with the Wholesale Customer Care Center or WCCC when it experienced difficulties. FiberNet was told by Verizon-WV that without these trouble tickets it would not otherwise be made aware of so-called "systemic" problems occurring within its OSS systems. Well, FiberNet took Verizon-WV's advice and began submitting trouble tickets to the WCCC. However, FiberNet was only able to open a very small percentage of these trouble tickets. For example, from September 17 through September 20, 2002, FiberNet attempted to open 25 trouble tickets with Verizon-WV through the WCCC. Of these 25 attempts, FiberNet was only successful in getting a trouble ticket opened by Verizon-WV in 4 instances. On a percentage basis, FiberNet was only successful in getting Verizon-WV to open a trouble ticket less than 20% of the time.

Not only would the WCCC not open FiberNet's trouble tickets, but the WCCC personnel handing FiberNet's inquiries were also something less than helpful. In some instances, the WCCC personnel attempted to direct FiberNet to another wholesale organization to handle the trouble, but in others, the WCCC representatives were uncooperative, rude, and in some cases simply hung up on FiberNet personnel during discussions on the telephone.

This failed process also serves to underscore how Verizon-WV's measurement of its OSS performance does not correspond with real world CLEC experiences. Since trouble tickets and reports drive the calculation of the metrics under the proposed Carrier-to-Carrier Guidelines being proposed by Verizon-WV in this case, Verizon-WV's data would obviously be skewed if its wholesale organizations were simply refusing to open CLEC trouble tickets. Obviously, Verizon-WV's wholesale performance will always look good if it simply refuses to acknowledge CLEC problems and open trouble tickets.

Based on nearly three years of real world experience, it is clear to FiberNet that Verizon-WV's OSS processes and procedures are loaded with problems every step of the way. It generates problems for customers and problems for FiberNet. If FiberNet causes a problem for a customer, then FiberNet takes responsibility for the problem, does its best to fix the problem, and tries to keep the customer happy. However, if Verizon-WV causes a problem, FiberNet still takes the blame, and FiberNet must still work to fix the problem, even if FiberNet had nothing to do it. Under the present set-up, Verizon-WV has little or no accountability.

Quite frankly, FiberNet is tired of Verizon-WV's problems requiring its staff to get involved in constant escalations, constant meetings with Verizon-WV personnel, and

constant discussions with angry customers. For FiberNet and its employees, these issues take away from the time, energy, and efforts that FiberNet would like to devote to serving its customers, but unless and until these significant OSS related problems are adequately addressed, FiberNet will continue to expend valuable resources attempting to work through Verizon-WV generated difficulties.

V. Verizon-WV's Application Further Fails to Satisfy Checklist Item 2 Because Verizon-WV Neither Renders Accurate Wholesale Bills Nor Resolves Billing Disputes in a Timely Manner

Section 271(c)(2)(B)(ii) requires Verizon-WV to provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d). The Commission has determined that access to OSS functions falls squarely within an incumbent LEC's duty under Section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable.[25] Thus, in order to demonstrate compliance with the competitive checklist, Verizon-WV must show that it is providing just, reasonable, and nondiscriminatory access to OSS, including the all-important billing component of Verizon-WV's OSS. In the instant case, Verizon-WV has failed to do so because its billing system simply does not work. Thus, the Commission must reject Verizon-WV's Application.

Specific to the billing component of OSS, Verizon-WV must demonstrate that it provides "competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that it provides such information to itself, and a wholesale bill in a manner that gives competing carriers

[25] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, Paragraph 84 (rel. Dec. 22, 1999) ("New York 271 Order").

a meaningful opportunity to compete.[26] In making such an inquiry, the Commission evaluates a RBOC's billing processes and systems and billing metrics.[27] The Commission also has looked at whether billing issues presented are competitively significant.[28] Verizon-WV's Application fails on all of these counts.

FiberNet routinely fines errors in the billing it receives from Verizon-WV. Some of the errors appear to be merely due to incompetence. Other errors appear so regularly as to suggest a pattern of discriminatory and anti-competitive behavior. For example, in many cases Verizon-WV has granted disputes regarding certain issues but continues to bill the items incorrectly, forcing FiberNet to dispute the same issues month-after-month. In other instances, Verizon-WV will continue billing FiberNet for service to an end-user after that end-user has been disconnected. It is not unusual for Verizon-WV to continue charging FiberNet up to five or seven business days after disconnection.

FiberNet has also experienced numerous instances in which disputes are submitted to Verizon-WV, but Verizon-WV fails to assign a claim number. For example, FiberNet has had to submit approximately 172 separate billing disputes to Verizon-WV on several occasions because Verizon-WV claimed to have no record of the disputes having been submitted in the first place. This is extremely frustrating and time consuming, and serves only to needlessly delay the proper resolution of FiberNet's billing disputes. Sometimes claim numbers are indeed assigned, but disputes are still not resolved in a timely manner or in some cases, they are not resolved at all. In other cases,

[26] Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks, Inc., for Authorization to Provide In-Region InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, Paragraph 97 (rel. Apr. 16, 2001) ("Massachusetts 271 Order").
[27] Id.

disputes are resolved in FiberNet's favor, but Verizon-WV fails to credit FiberNet's account accordingly. As a matter of course, FiberNet disputes these charges when they appear on our wholesale bills.

Unfortunately, Verizon-WV has no incentive to bill its competitors accurately or to resolve billing disputes promptly. Both inaccuracy and delay work to Verizon-WV's advantage by increasing its competitors' costs of doing business. At present, Verizon-WV is not penalized for inaccurate billing or for delaying the resolution of legitimate billing disputes. Yet, FiberNet must devote significant human resources to verify bills, report and monitor disputes, and follow-up with appropriate Verizon-WV personnel, often numerous times, just to make sure that the particular dispute is being processed by Verizon-WV or that the resolution of the dispute is being properly implemented.

At present, FiberNet has approximately $2 million in disputed billings with Verizon-WV in the State of West Virginia. Some of the individual items associated with these disputed amounts have been unresolved for more than 9 months. These particular billing disputes are many and varied and topics include EEL conversions, UNE bills and resale and collocation billing. A good example of the difficultly FiberNet experiences in attempting to resolve billing discrepancies is a current billing dispute concerning Verizon-WV's billing for power usage at FiberNet's collocations. FiberNet has been embroiled in numerous discussions and conference calls with Verizon-WV concerning significant credits that are due to FiberNet for incorrect power usage billings.[29] Verizon-

[28] Massachusetts 271 Order, Paragraph 98 (noting that exceptions related to billing issues were not "competitively significant").
[29] The amount of money in dispute on this one issue alone is $400,000, which is a significant amount of money for a small, start-up company like FiberNet.

WV simply refuses to bill the appropriate amounts, and further, Verizon-WV has failed to make a good faith effort in discussing and resolving this particular billing dispute.

There also appears to be a serious breakdown in communications between the various Verizon-WV departments involved in the resolution of CLEC billing disputes. Despite trying to deal in a commercially reasonable manner with Verizon-WV's dispute resolution team, FiberNet has found that issues and dollar amounts being discussed with the Verizon dispute resolution personnel are apparently not being communicated to Verizon's billing and collections personnel. As a result, while a particular billing dispute is being addressed with the dispute resolution arm of Verizon, FiberNet continues to receive bills from Verizon-WV containing these same disputed charges. Even more disturbing is the fact that FiberNet has received letters from Verizon-WV's collections department in which Verizon-WV threatens to cut off the provision of wholesale services to FiberNet on a prospective basis due to perceived outstanding account balances directly associated with these billing disputes. Verizon-WV refers to this as an "embargo." This type of harassment reflects a pattern of anti-competitive conduct on the part of Verizon-WV that serves only to further inhibit competition by unreasonably withholding essential services from CLECs in general, and from FiberNet specifically.

Because of the significant financial amounts involved, especially to a small start-up company like FiberNet, Verizon-WV's delay in resolving disputed bills weakens the financial integrity of FiberNet. FiberNet must keep accruals to cover potential payments if the disputes are not resolved in its favor. FiberNet has had to hire additional personnel in order to audit, evaluate and oftentimes correct Verizon-WV billing inaccuracies. In addition, FiberNet must spend extra time and money with its outside auditors explaining

these disputes and negotiating how they will be captured and explained in our auditors' financial reports.

At present in West Virginia, there are no performance metrics associated with billing accuracy, which take into consideration the validity of the charges, or the timeliness of the dispute resolution process which, as discussed earlier, are both significant problems for FiberNet. As a result, Verizon-WV overstates its compliance with Item 2 of the checklist and fails to disclose the difficulties that competitive carriers such as FiberNet experience in their attempts to promptly resolve wholesale billing disputes.

At present, FiberNet continues to receive its Verizon bills in a paper format. FiberNet has asked and Verizon now transmits some bills electronically using the so-called BOS-BDT format, rather than as paper bills. FiberNet has not only requested that its bills be presented in an electronic format, but that these electronic bills be auditable and be considered by Verizon to be the "official bill of record." Although Verizon-WV claims that the BOS-BDT electronic billing option was available in West Virginia in November 2001, it was not until June 2002, roughly the same time that Phase A of its Section 271 filing was made with the PSCWV, that Verizon-WV allowed CLECs the option of selecting the BOS-BDT version of its wholesale bill as its "official bill of record."

In the interim, FiberNet has had to continue to review and evaluate its wholesale bills in paper format. FiberNet cannot readily audit or validate these paper bills. In fact, auditing paper bills has been nothing short of impossible. The paper bills FiberNet receives presently consists of 5 to 10 boxes of paper on a monthly basis, and needless to

say, it takes a substantial amount of time and resources for FiberNet personnel to wade through these mountains of paper in an effort to determine whether Verizon-WV is in fact properly billing FiberNet for the services and offerings being provided. Without a properly formatted and auditable electronic bill, FiberNet has had no efficient or effective way to determine whether Verizon-WV is correctly charging it for the services it has ordered.

Even the process FiberNet was required to follow in order to be able to receive its bills in electronic format has been confusing and unduly burdensome. As mentioned earlier, FiberNet has been involved in this process for quite some time. FiberNet first approached Verizon about the possibility of receiving bills electronically in 2001. Initially, FiberNet was told by Verizon-WV that wholesale electronic billing was not available to CLECs in West Virginia. Verizon-WV finally provided us with a CD, which was unreadable without support software. Verizon-WV would not provide supporting software and instructed FiberNet to go to Telcordia (formerly Bellcore). Telcordia would then sell FiberNet the information so we could write a program to read the CDs. The price was $2,000.00 per book and FiberNet would have needed 3 volumes. Then FiberNet's IT department would have to spend considerable resources writing the program. When FiberNet asked if it could speak to some of Verizon-WV's other wholesale customers to get a reference on the feasibility of the CD's and find out perhaps a way FiberNet could purchase the software to read the CD's rather than write our own, Verizon-WV refused to give FiberNet the information, claiming that it was "proprietary". FiberNet finally after several months of research found a company that had the software, and FiberNet eventually contacted and contracted with this company to read FiberNet's

CDs. This company currently cannot read FiberNet's UNE invoices, only resale. FiberNet is working with this company, but at the present time still cannot read the UNE invoices via BOS-BDT. When FiberNet receives the CDs there is no information on the outside that gives us the identifying BAN number, which identifies the CD as ExpressTrak Residential or ExpressTrak Business billing format. In order to find out which bills are which, FiberNet is forced to pay its vendor to read each one just to identify the CD. FiberNet issued Trouble Ticket number 574803 on this issue and Verizon-WV responded by stating that the CDs were packaged out of house and there was nothing Verizon-WV could do.

FiberNet also takes little comfort in the fact that the billing component of Verizon-WV's OSS was examined as part of the Virginia KPMG test. FiberNet was not a party to the KPMG test in Virginia because it does not presently operate in that state. Thus, FiberNet had no input into or discussions with KPMG while third party testing was being performed in Virginia. Having said that, FiberNet believes the KPMG test in Virginia falls short of adequately addressing all stages of a CLEC relationship with Verizon, particularly with regard to the billing relationship.

First of all, because Verizon Virginia was not providing an electronic bill of record to CLECs in Virginia at the time the KPMG test was conducted, the KPMG test did not include any analysis as to the timeliness or accuracy of the BOS-BDT electronic bill. Rather, the KPMG test evaluated only the wholesale paper bill provided by Verizon Virginia. Thus, this aspect of the KPMG test in Virginia is essentially worthless for purposes of examining the timeliness and accuracy of the BOS-BDT electronic billing being provided by Verizon to CLECs in West Virginia. If the wholesale electronic

billing being provided by Verizon-WV is to be considered at parity with electronic billing that Verizon-WV provides to its own retail customers, then it was essential that some degree of independent third party testing of the timing and accuracy of the wholesale electronic bills that Verizon-WV has just recently begun providing to CLECs in West Virginia be required. This was not done and again only serves to underscore the inadequacy of the Virginia KPMG test. Without confidence that Verizon-WV's electronic billing systems are unequivocally able to deliver adequate services and billing support to its CLEC customers, FiberNet cannot envision how the competitive local exchange market in West Virginia can ever be expected to develop and prosper.

The Virginia KPMG test did not create and test for key aspects of a CLEC's interaction with Verizon, including, among other things, billing disputes or queries or any instances of back billing by Verizon. More telling, KPMG did not examine or audit any Verizon-generated bills for CLECs in Virginia that actually had real customers, nor did KPMG interview any CLECs regarding their actual billing experiences with Verizon. In short, KPMG's limited evaluation of Verizon's billing procedures and bills did not properly reflect real world CLEC's experiences with Verizon's various billing processes and procedures, and are certainly not indicative of FiberNet's past experiences in trying to maneuver through the morass otherwise known as the Verizon billing and dispute resolution processes.

For example, Verizon does not provide FiberNet with adequate descriptions and clear identification of charges on bills that would allow FiberNet to understand and compare the charges on the bill to the products and services it has ordered. In this regard, FiberNet has persistently asked Verizon-WV for a mapping of the "ordering" codes to the

"billing" codes. Specifically, FiberNet has asked Verizon to provide (1) a description of each element that we order from Verizon; (2) the Universal Service Order Code(s) ("USOCs") that correlate to the particular UNE description; and (3) the Network Channel and Channel Interface ("NC/NCI") Codes, secondary codes and specification codes that are associated with the correlated UNE description and USOC(s). To date, however, Verizon-WV has not adequately addressed FiberNet's concerns.

FiberNet's difficulties are made worse by Verizon-WV's substandard billing practices, including, but not limited to, back billing, inaccuracies and manual processes. For example, Verizon-WV has back billed FiberNet in some instances for charges that are 2 years old. What makes this type of interaction even more burdensome to FiberNet is the manual processes employed by Verizon-WV. Verizon-WV manually places charges on FiberNet's bills and then provides a spreadsheet as support for these charges. This method is excessively burdensome for FiberNet and only serves to prolong an already lengthy and unreasonable claims and dispute resolution process. As noted previously, the resolution of the majority of disputes extend well beyond the target thirty (30) day window and requires numerous telephone calls and/or e-mails in order to resolve even the most basic of claims.

Verizon-WV is apparently not adequately updating its billing system to support new product offerings. When Verizon-WV provides a new product or service offering, it does not create billing codes for theses products or services that will allow for them to be billed on a mechanized basis. As a result, Verizon-WV is manually processing invoices and spreadsheets, increasing human error and greatly increasing the chance for incorrect or improper billing. Moreover, once the billing is mechanized, this is not effectively

communicated through the Verizon organization thereby increasing the likelihood of FiberNet being double billed, both on a manual and mechanized basis, for the same product or service offering.

Based on Verizon-WV's conduct of discriminatory and anti-competitive practices against FiberNet in West Virginia, especially in the billing domain, the Commission should not approve Verizon-WV's 271 filing at this time until (1) it has specifically authorized the independent third party testing of Verizon-WV's electronic billing and support systems; and (2) Verizon-WV has affirmatively demonstrated that it has resolved all of the billing and other associated problems previously described herein.

VI. Verizon-WV's UNE Rates Are Not TELRIC Compliant

In FiberNet's view, the biggest impediment to the development of meaningful local exchange competition in West Virginia is Verizon-WV's current unbundled network element ("UNE") prices. Simply stated, Verizon-WV's existing UNE prices are too high to support competitive entry in West Virginia to any meaningful degree, and are precisely the reason why so few carriers have actually been able to make a go of it in West Virginia. At present, Verizon-WV's UNE rates for a 2-wire analog POTS loop is $14.49 in Density Cell 1, $22.04 in Density Cell 2, and a whopping $43.44 in Density Cell 3.

Some six years after the passage of the Telecommunications Act of 1996, Verizon-WV's own Checklist Declaration indicates that there are only 20 active CLECs in West Virginia. Of these 20 active CLECs, three are listed as having filed for bankruptcy, and the Verizon-WV list does not take into account those CLECs like CTSI and Fairpoint Communications that have already left West Virginia. It is also significant

to note that none of the major carriers – AT&T, MCI/WorldCom, Sprint – have chosen to actively compete in any meaningful fashion in the local exchange market in West Virginia to date in large measure due to the ridiculously high UNE rates that Verizon-WV has been permitted to charge CLECs for over five (5) years now. Indeed, Verizon-WV's UNE rates, if left unchecked, threaten the long-term viability of local exchange competition in West Virginia.

The fundamental problem is that West Virginia UNE rates are no longer in compliance with required TELRIC pricing principles. In part, this problem stems from stale evidence and outdated inputs and assumptions. Telecommunications is a declining cost industry, yet the evidence on which the PSCWV relied to set Verizon-WV's initial UNE rates is now over five years old.[30] Specifically, Verizon-WV's present UNE rates were determined in the very early stages of the implementation of the Telecommunications Act of 1996, and were based on an early version of the Hatfield Model that was actually outdated even before the SGAT proceeding of five years ago was completed. Consequently, the inputs and assumptions that were mandated by the PSCWV in the SGAT proceeding, and which may have been reasonable at that time, are now stale, outdated and no longer in compliance with TELRIC pricing principles.

At present levels, Verizon-WV's UNE prices are among the highest in the nation, and they are indeed the highest in the Verizon footprint at an average of $24.58 for a 2-wire analog POTS loop. By comparison, based on information complied by the Consumer Advocate Division of the Public Service Commission of West Virginia,[31]

[30] The Public Service Commission of West Virginia established what it believed were TELRIC-compliant rates in 1997 in Case No. 96-1516-T-PC, et. al., Order dated May 16, 1997.
[31] See, Survey of Unbundled Network Element Prices in the United States (Updated July 1, 2002) By Billy Jack Gregg, Director, Consumer Advocate Division, Public Service Commission of West Virginia.

Virginia has an average 2-wire analog loop rate of $13.60; Maryland has an average 2-wire analog loop rate of $14.50; Pennsylvania has an average 2-wire analog loop rate of $13.81; Delaware has an average 2-wire analog loop rate of $12.05; New York has an average 2-wire analog loop rate of $11.49; and New Jersey has an average 2-wire analog loop rate of $9.52. In sum, Verizon-WV's current UNE rates need to be immediately and significantly reduced to a more reasonable, realistic level before Verizon-WV is granted in-region long distance operating authority so as to foster the development of meaningful local exchange competition in West Virginia.

VII. The Verizon-WV/Commission Staff/Consumer Advocate Division Stipulation Does Not Cure The TELRIC Deficiency In Verizon-WV's UNE Rates

On October 15, 2002, Verizon-WV, the Public Service Commission of West Virginia Staff, and the Consumer Advocate Division of the Public Service Commission of West Virginia filed a Stipulation seeking to implement certain reductions and modifications to Verizon-WV's unbundled network element rates.[32] While the Verizon-WV/Commission Staff/CAD UNE rate proposal sounds good on its face, it is in reality woefully inadequate to spur the development of meaningful local exchange competition in West Virginia. Under this proposal, Verizon-WV does not lower any existing UNE rate, but simply shifts around certain wire centers into different Density Cells and creates a new Density Cell 3 with a rate of $35.00. This newly proposed $35.00 rate is not supported by any specific cost information. Nor has any evidence been presented by Verizon-WV that demonstrates that this newly proposed Density Cell 3 rate of $35.00 is in fact TELRIC compliant.

These obvious deficiencies aside, Verizon-WV's proposal in no way represents the type of comprehensive UNE rate analysis that is so long over due in West Virginia. As FiberNet has proposed previously in this and other regulatory proceedings before the PSCWV, it is essential that a meaningful, in-depth review of Verizon-WV's UNE rates be conducted in order to ensure that Verizon-WV's UNE rates are in fact TELRIC compliant, and this obviously does not occur by simply accepting Verizon-WV/Commission Staff/CAD's UNE rate proposal without proper examination. It is also important to note that even with the changes being proposed by Verizon-WV, West Virginia UNE rates will still remain well above the average of those in other Verizon jurisdictions. This in turn will almost surely guarantee continued low levels of actual local exchange competition in West Virginia.

Without some proof that the Verizon-WV UNE rate proposal is both cost based and TELRIC compliant, it should not be accepted. The Commission should not be willing to settle for Verizon-WV's clearly deficient UNE rate proposal when the PSCWV has inexplicitly refused to conduct the type of comprehensive UNE rate review that is sorely needed in West Virginia in order to spur the development of meaningful local exchange competition. In FiberNet's view, the Verizon-WV/Commission Staff/CAD UNE rate proposal is not TELRIC compliant and will provide no real incentive for potential competitors to enter the local exchange market in West Virginia.

VIII. Verizon-WV Is Not Providing White Page Directory Listings In Compliance With Checklist Item 8

[32] This UNE Rate Stipulation was identified and marked as Verizon-West Virginia Exhibit 12 in the underlying state Section 271 hearings held November 6-8, 2002.

To meet the specific requirements of Section 271, Verizon must publish white pages directory listings for customers of CLECs. Under Verizon's current procedures, however, the elements of this particular checklist item have not been met. As a result, FiberNet's customers have been seriously affected by the deletion of their listings from the Verizon telephone directories.

In order for meaningful local exchange competition to exist, Verizon must include CLEC customers in the Verizon white pages. However, FiberNet customers have often been eliminated from the Verizon-WV white pages directory, and this has harmed customers attempting to switch their local exchange service from Verizon-WV to an alternative carrier such as FiberNet. Such mistakes seriously impede the progress of local exchange competition in West Virginia. If customers considering a switch to a CLEC, especially the small and medium sized business customers who comprise much of FiberNet's current customer base, reasonably believe that their white page directory listings might be adversely impacted as a result of their decision to switch to a CLEC, these customers are much less likely to switch to a CLEC like FiberNet. Until such time as these obstacles are removed, local competition in West Virginia will never truly flourish. Before Verizon-WV is allowed to enter the long distance market in West Virginia, the problems with the white pages directory listings must be rectified.

Moreover, because the directory listings come out only on an annual basis, the customer will suffer substantial harm if the listing is dropped from the local directory, and will continue to experience that harm until the next version of the involved telephone directory is published by Verizon-WV. Again, this problem has competitive ramifications when it is associated with switching to a CLEC. Because the Verizon-WV

white pages is the primary directory in West Virginia, being dropped from the Verizon-WV white pages effectively drops the phone number and name of the customer out of the public domain. Such a failure to include FiberNet's customers in the white pages directory listings decreases customer confidence in the competitive process and erodes it significantly by harming consumers who have merely elected to exercise competitive opportunities.

The processes that Verizon-WV uses to input white page information differs depending on whether the underlying customer is being served by the CLEC on a resale/UNE-P basis or on a UNE loop basis. For example, if a CLEC elects to serve a customer through resale or UNE-P, it must submit an order changing the type of service, but there is no physical disconnection of the established Verizon-WV service. Unless the CLEC specifically asks Verizon-WV to change the customer's listing, there is no need to submit an order modifying or deleting the listing.

However, for the Verizon-WV customer who switches to a CLEC with its own switch but using Verizon-WV's loop, Verizon-WV disconnects the retail service. This creates a listing service order to "delete" the customer's directory listing. The directory listing is then "restored" by the competing carrier's loop and number portability order. It is this manual process that FiberNet believes accounts for the large majority of the directory errors or omissions that it has experienced in the past.

FiberNet respectfully submits that the same process used for UNE-P and for resale CLECs should be used for UNE-loop CLECs. The process of deleting and restoring customer listings creates a situation that is discriminatory, inefficient and prone to error. The process of manually deleting a directory assistance listing and upon

confirmation from the CLEC manually re-entering the same information into the directory assistance database is highly inefficient and works to increase the number of listings "dropped" from the Verizon-WV white pages. Rather than deleting and then manually re-entering customer information into Verizon-WV databases, the name and directory listing should be maintained in the database unless and until the CLEC requests that the information be removed or changed. This process would undoubtedly decrease the number of errors and "dropped" CLEC listings.

As mentioned earlier, the problem of "dropped" or incorrect CLEC listings is especially significant in that there is no adequate remedy currently in place to address the customer hardship that results from "dropped" or incorrect white page listings. Since the directory is printed only on an annual basis, any errors cannot be rectified until a subsequent calendar year. FiberNet submits that Verizon-WV should not be granted permission to enter the long distance market in West Virginia unless and until it is able to meet the quality requirements under this particular checklist item. To be sure, the current process of deleting and restoring white page listings affects only the customers exercising competitive choice and unfairly discriminates against customers who decide to take advantage of the benefits flowing from in local exchange competition.

Contrary to the impression Verizon-WV would like to create that it provides CLEC with multiple opportunities to review their customers' directory listings, the fact of the matter is that CLECs typically have only one opportunity to review Verizon's proposed directory information for errors.[33] According to Verizon-WV, thirty (30)

[33] FiberNet points out that of the "procedures" Verizon claims to have in place for CLECs to review their customers' directory listings, only one of these "procedures" produces directory listing information that a CLEC can review for accuracy prior to publication. Contrary to Verizon's claim, the ability of a CLEC to receive listings in an electronic format (Checklist Declaration at §267) does not provide CLECs an

business days prior to the closing date for a particular white page directory, Verizon-WV provides CLECs a Listing Verification Report ("LVR") containing all of the CLECs customers' listing in the Verizon-WV database for publication in the upcoming directory.[34] At that point, a CLEC can presumably review its customers' listing information for accuracy and advise Verizon of any omissions or revisions to correct the listings.

Upon receiving the LVR for its customers, FiberNet carefully reviews the information in the LVR, corrects any incomplete, missing or inaccurate listings and promptly submits the updated information to Verizon-WV. FiberNet typically identifies numerous errors in the listing information provided by Verizon-WV. Thus, FiberNet is left with no choice but to double check data that was initially submitted to Verizon-WV as making its way through the internal Verizon-WV processes without falling out somewhere along the way. The problem inherent in this process is that it becomes FiberNet rather than Verizon-WV's responsibility to verify the accuracy of its customer information.

After submitting its revised information to Verizon-WV, FiberNet frequently contacts its representatives at Verizon-WV to ensure that it received the updated information. FiberNet has also requested a copy of the page proofs immediately prior to publication in order to confirm that the updates and revisions provided previously have been properly incorporated into the appropriate directory. However, Verizon-WV will not provide the requested page proofs. Thus, contrary to the claims made by Verizon-WV, FiberNet typically gets only one real opportunity to review and correct its

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opportunity to sufficiently review the accuracy of their customers' listings or to provide updates or revisions to Verizon.

customers' listing information before Verizon-WV publishes the information in its directories.

Despite FiberNet's efforts to ensure that Verizon-WV has complete and accurate information for FiberNet's customers, Verizon-WV has continually failed to include accurate listings for FiberNet's customers. FiberNet stated that in its review of the LVRs it identifies numerous errors in the listing information. In 2002, of 4,589 listings submitted to Verizon-WV, FiberNet identified 1229 listing errors in the LVRs, for an error rate of 27%. FiberNet promptly advised Verizon-WV of the errors and provided Verizon-WV corrected information to resolve the discrepancies, but FiberNet still has no way of knowing whether these corrections will actually be reflected in the telephone directory until after the directory is published and it starts receiving complaints from customers.

Under the current Verizon-WV process, the closing of a directory is a nightmare for a small start-up company like FiberNet that relies heavily on its customer relations. FiberNet is literally left scrambling to correct numerous last minute corrections. Even then, and even after assurances from Verizon-WV that the corrections have been made, the listings may not make it into the appropriate directory. This result is particularly devastating to FiberNet's business customers who count on the fact that people can find and reach them through the utilization of accurate directory listings.

FiberNet recently started seeing instances in which the customer's white page directory listing is transposed. For example, if the customer's white page listing is supposed to read **"Smith, Joe,"** Verizon-WV has the listing as being **"Joe, Smith."** FiberNet has no idea why this is occurring, but it has occurred on a regular basis.

[34] Checklist Declaration §267.

FiberNet has even demonstrated this problem to Verizon-WV wholesale personnel who happened to be visiting FiberNet's offices on October 16, 2002. This is obviously a serious problem that needs to be corrected by Verizon-WV.

In response to the grave concerns expressed by the CLECs about inaccurate directory listings, Verizon-WV even contacted VIS and held publication of the next 4 upcoming books, which were Montgomery, Pt. Pleasant, Beckley and Morgantown. Of the 101 issues presented by FiberNet for investigation by Verizon-WV, 58 were in these four books. StratusWave's 17 issues were all in the Wheeling book, which closed in June and had already been published. Thus, they could not be fixed before publication of the 2002 directory. Verizon-WV also pulled another 220 LSRs with directory order activity in the 4 books for investigation.

During the subsequent investigation, Verizon-WV identified 114 listings from the FiberNet lists and the additional sample that would have been made in error if not corrected before publication. Verizon-WV represented that of the 114 errors corrected, 66 would have been "severe" errors as follows: 14 would have affected the spelling of the finding name, 36 would have been omitted, 15 would have been published when the customer had requested non-published, and 1 would have resulting in the incorrect TN [telephone number] being listed. Other errors affected addresses, designations, appearance, etc. Of the remaining FiberNet issues that affected directories other than these 4, Verizon-WV processed corrections for 28. Of the 28, 11 were "severe" errors as follows: 2 were errors in the finding name, 8 would have been omitted, and 1 was an incorrect TN.

Additionally, Verizon-WV investigated the root cause of the errors and found that the top reasons in descending order for errors were NMC [National Market Center] Representative error, followed by ILEC system error, then VIS system/process error and CLEC error. Verizon-WV also found that a VIS system defect affected 12 of the StratusWave issues, causing the listings to be erroneously omitted from the Wheeling directory.

But for Verizon-WV's extraordinary action of actually holding publication of 4 books, numerous publication errors would have actually occurred, causing a significant adverse impact on FiberNet and its customers, and further illustrating the serious problems inherent in the Verizon-WV directory listing process. Moreover, only a sample of listings from those 4 books were checked and corrected, which only indicates that there were likely errors in listings that were not checked by Verizon-WV. The Commission should also take note of the fact that the incidents of directory listing errors increased as the size of the underlying telephone directory increased. FiberNet can only imagine how many directory listing errors would actually find their way into the larger directories in West Virginia like Charleston and Huntington.

In addition, Verizon-WV personnel have recently started holding FiberNet service orders to ensure that the directory listing portion of the order is correct. While FiberNet appreciates the fact that Verizon-WV is finally paying closer attention to its directory listing obligations, this increased scrutiny should not be accomplished at the expense of the timely processing of FiberNet's orders. There are certain prescribed confirmation and provisioning intervals that Verizon-WV is obligated to meet. FiberNet needs to be able to have its orders processed in a timely manner, and Verizon-WV's decision to begin

holding orders in an apparent effort to work out its directory listing problems is not acceptable and only underscores the numerous flaws in Verizon-WV's OSS – flaws that clearly need to be corrected before Verizon-WV is permitted to enter the long distance market in West Virginia.

Neither can FiberNet find comfort in the fact that Verizon's OSS was independently tested by KPMG as part of the Virginia Section 271 proceeding. The KPMG OSS test utilized in Virginia cannot be relied upon by the Commission as the comprehensive test that Verizon claims in its filing. The KPMG OSS test only tested whether the LVR was "sent" on time. There was no attempt to analyze if there were errors in the data listed, and there was no attempt to analyze the error rate to CLECs in the final directory publication. Nothing in the KPMG test examined the accuracy of CLEC customer directory listings, or whether or not the directory listings were actually inserted in the directory. In other words, there is no "test" that determines whether the information in the LVR itself (even after corrections made by the CLECs) actually make it into the appropriate directory. In short, the KPMG OSS test in Virginia only looked at the front end of the process and not the critical tail end final product where the problems are finally exposed.

There are also problems with the accuracy of Verizon's Yellow Page listings. As the Commission is undoubtedly aware, business customers are permitted to have a free yellow page listing. Yet, Verizon-WV has managed to find a way to bungle this process as well. For example, FiberNet has found that there are some business white page listings that did not appear in the yellow pages, while some listings appeared in the yellow pages and not in the white pages. Dropped yellow page listings are an especially

difficult problem for FiberNet to combat because unlike the LVR that Verizon-WV provides for white page listings, there is absolutely no verification report that shows what is supposed to be produced for the yellow pages. In other words, FiberNet is totally at Verizon-WV's mercy to produce an accurate listing for its business customers in the yellow pages. Obviously, this is a major flaw in the directory OSS process and is no less significant to FiberNet's customers than white page directory listing errors and omissions.

Moreover, the Virginia KPMG test did not even address the proper publication of yellow page listings providing yet another good example of why the KPMG test cannot be relied upon by the Commission as the comprehensive test that Verizon-WV claims it to be in its filing. The plain fact of the matter is that the KPMG test does not address these serious directory listings problems that flow from Verizon's fundamentally flawed OSS. Simply stated, the directories get published. Customer listings are incorrect, and there is no remedy whatsoever provided by Verizon-WV.

While Verizon-WV has agreed to adopt metric OR 6:04 in West Virginia, this particular metric compares the listing information on the LSR to information on the CSR, and it is designed to measure only manually inputted orders and not "ERL" orders which should automatically flow through. While this particular metric represents a good start, it does not go far enough insofar as measuring Verizon-WV's performance in all aspects of the directory listing process. Additional metrics are obviously needed to measure Verizon-WV's performance on directory listing orders that are designed to flow through Verizon-WV's systems. The proposed metric is also deficient in that it provides no form

of compensation to CLECs in cases where customer listings are in fact dropped, omitted or otherwise published incorrectly.

IX. Verizon-WV Is Not Providing Local Dialing Parity

Specifically, Section 271(c)(2)(xii) requires Verizon-WV to provide "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3). Specifically, Section 251(b)(3) imposes upon all LECs the duty to provide "dialing parity" to competing carriers with no unreasonable dialing delays. The rules subsequently established by the FCC to implement Section 251(b)(3) provide that customers of competing carriers must be able to make a local call by dialing the same number of digits the RBOC's customers dial to complete a local telephone call.

While FiberNet understands that dialing parity is not generally an issue in Section 271 proceedings, it is unfortunately an issue in West Virginia. In certain border areas of West Virginia, Verizon-WV customers are permitted to make local calls across LATA boundaries into Ohio, Pennsylvania, Kentucky, Maryland and Virginia. This occurs because when the District Court approved the Plan of Reorganization under the Modification of Final Judgment ("MFJ"), it approved an exception to the general prohibition on RBOC provision of interLATA service to permit provision of certain grandfathered Extended Area Service ("EAS") across LATA boundaries.[35]

When FiberNet was certificated by this Commission to provide competitive local exchange service, it was specifically directed by the Commission to mirror the local calling areas of Verizon (Bell Atlantic). This would logically include those EAS areas

[35] United States v. Western Electric Co., 569 F. Supp. 990, 1002 (D.D.C. 1983).

that are expressly recognized and detailed in both Verizon-WV's local exchange service tariffs and telephone directories. However, Verizon-WV has steadfastly refused to allow FiberNet customers being served on a facilities basis in these border EAS areas to make and complete calls on a local basis to corresponding EAS exchanges located in adjoining states.[36] For example, certain of Verizon-WV's recognized EAS local calling areas in Parkersburg, Wheeling, and Weirton, West Virginia extend into portions of Ohio near Belpre, St. Clairsville and Steubenville, respectively. In instances where Verizon-WV customers make and receive calls within these overlapping interLATA EAS local calling areas, these calls are carried, completed and charged as local calls.

Conversely, FiberNet local exchange customers in Huntington, Parkersburg, Wheeling and Weirton, West Virginia who initiate calls to NXXs in the corresponding EAS local calling exchanges on the Ohio side of the border have had those calls unilaterally blocked by Verizon-WV. In order for FiberNet's customers to be able to complete what should have been a local call within these recognized EAS areas, it was initially necessary for FiberNet's customers to dial these numbers on a 1+ basis. This situation was made even more frustrating by the fact that customers in Ohio calling into either Verizon-WV's or FiberNet's customers apparently did not face these same local calling restrictions because FiberNet never received any complaints from its customers in these EAS areas that they were unable to receive calls from individuals in Ohio or that calls originating within these recognized EAS areas in Ohio needed to placed on a 1+ basis in order for them to be successfully completed to FiberNet's customers in West Virginia.

[36] This dialing parity issue apparently does not come into play in situations in which the CLEC customers are being served on a resale or UNE-Platform basis.

This is an issue that FiberNet has literally been working on since late 1999. Initially, Verizon-WV indicated a willingness to address this issue on a constructive basis. At one point, it even appeared as though an agreement in principal had been reached with Verizon-WV on a resolution of this issue in May, 2000. However, that agreement ultimately fell by the wayside, and FiberNet was forced to continue in its efforts to have calls from its customers that originated or terminated in exchange areas within a recognized Verizon-WV EAS calling area carried as local calls as Verizon-WV's own customers were permitted to do.

After numerous meetings and discussions including a meeting that took place in February 2001, Verizon-WV finally proposed a "work around" for this particular situation. Under the Verizon-WV proposed work around in Huntington, West Virginia, FiberNet agreed to purchase an interstate special access DS-1 facility from Verizon-WV to a meet point of the ILEC on the Ohio side of the border. In this specific example, the ILEC on the Ohio side of the happened to be Verizon North. FiberNet similarly agreed to order a DS-1 facility from Verizon North in Ohio and also agreed to enter into a traffic termination agreement with Verizon North in an effort to make this arrangement work. Verizon-WV was willing to facilitate this work around because the ILEC on the Ohio side was another Verizon company. Even at that, it took an inordinate amount of time to finally complete this process.

The process in Parkersburg, Weirton and Wheeling, West Virginia has been even worse because the corresponding ILEC on the Ohio side of the border in these cases happens to be Ameritech/SBC, Verizon-WV has not done nearly as much as it should have in assisting FiberNet in attempting to fashion the same work around that was

implemented in Huntington, West Virginia. Rather than take the lead on solving this critically important issue, Verizon-WV basically sat on its hands while FiberNet was forced to do the heavy lifting with Ameritech/SBC. In short, Verizon-WV essentially did nothing to make Ameritech/SBC aware of these cross LATA EAS issues until FiberNet first approached Ameritech/SBC. To date, the Verizon-WV "work around" for this problem in Parkersburg, Wheeling and Weirton, West Virginia has still not been successfully implemented, and in all likelihood, will not be for several more months at a minimum. As a result, FiberNet will be forced to continue, at significant expense, to route this "local" traffic through an interexchange carrier for transport and completion to end users in Ohio.[37]

Moreover, Verizon-WV does not make CLECs seeking to provide competitive local exchange service in these EAS areas on a loop and number port basis aware of these dialing parity restrictions up front. Thus, facilities-based CLECs like FiberNet are forced to scramble around to find a solution to a problem initiated solely by Verizon-WV in an effort to provide our customers in these recognized EAS areas with the same calling scope and dialing parity being utilized by Verizon-WV's customers.

While Verizon-WV has a number of "reasons" why it is necessary for this situation to occur, FiberNet is not convinced that any of these reasons are truly legitimate. In fact, Verizon-WV can provide no valid legal or regulatory basis for the imposition of this policy. Much like the development of its "no build" policy, Verizon-WV appears to have simply decided internally that it would not allow CLEC customers being served on a

[37] On a monthly basis, FiberNet spends approximately $12,000 to an interexchange carrier for the carriage and completion of these "local" EAS calls between FiberNet's end users in Wheeling, Weirton and Parkersburg, West Virginia to individuals located in the corresponding EAS exchanges in Ohio. Over the

facilities basis in these EAS areas to have the same ability as Verizon-WV's customers have to place local calls. This is clearly in violation of the Act's dialing parity requirement embodied in Section 271(c)(2)(B)(xii), and must be immediately remedied before Verizon-WV is allowed to provide in-region, interLATA service in West Virginia.

Let there be no misunderstanding on this issue, FiberNet adopted the aforementioned Verizon-WV "work around" in Huntington, West Virginia because it seemingly had no other viable alternative. Building additional facilities in these situations was not economically feasible,[38] and the cost of continuing to route this traffic through an interexchange carrier has continued to increase as FiberNet has added customers in these areas. At the end of the day the fact remains that facilities-based CLEC customers in these EAS areas are not presently able to place local calls using the same local dialing protocols being utilized by Verizon-WV's customers absent expensive and time consuming network work arounds required solely by Verizon-WV.

In sum, the point here is that FiberNet and other similarly situated CLECs should not be forced by Verizon-WV to implement these network work arounds, and because Verizon-WV has made this decision to unilaterally block FiberNet's customers from being able to place direct dial calls on a local basis to these recognized EAS areas, it cannot be judged to be in compliance with the dialing parity requirements of the Telecommunications Act as contained in Checklist Item 12.

X. Verizon-WV Is Not Paying Reciprocal Compensation To Eligible CLECs in West Virginia In Violation of Checklist Item 13

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course of a year, this equates to nearly $144,000 -- not an insignificant amount of money for a small start-up CLEC like FiberNet.

[38] This is precisely the same conclusion the FCC reached in *In the Matter of Request by RCN Telecom Services and Bell Atlantic for Clarification of Bell Atlantic's Authority to Carry Local Traffic between Exchanges on behalf of Competitive Local Exchange Carriers,* File No. NSD-L-99-05, Memorandum Opinion and Order (released Aug. 31, 1999) at Paragraphs 12-13.

As FiberNet noted earlier regarding Verizon-WV's interconnection and transport services, Verizon-WV apparently believes that it may avoid paying for the transport of its own traffic carried over the network of a CLEC by instituting its GRIP policies. Under this Verizon-WV created scheme, Verizon-WV has essentially conjured up a definition for what it calls the "Interconnection Point (IP)." According to Verizon-WV, the IP is the point where Verizon-WV no longer has financial responsibility for the payment of the transport of its traffic, regardless of the fact that Verizon-WV is using the network facilities and transport facilities of the CLEC to complete the further transport of that Verizon-WV traffic. This is a basic distortion of the requirement that Verizon-WV, as the originator of the traffic, is financially obligated for its traffic, just as a CLEC is financially obligated to arrange for the transport of its traffic over Verizon-WV's network. In this latter situation, Verizon-WV charges the CLEC for transport of the CLEC's traffic, but categorically refuses to pay when the situation is reversed. In this way, Verizon-WV seeks to avoid its obligation to comply with the reciprocal compensation arrangements and to unfairly shift the financial burdens on the CLEC. This Verizon-WV created scheme is fundamentally unfair and is clearly not in compliance with Checklist Item 13.

In addition to the avoidance of its reciprocal compensation obligations through the use of its unlawful GRIPs scheme, Verizon-WV is not providing compensation for ISP-bound traffic in accordance with the Commission's Inter-Carrier Compensation Order. In this regard, FiberNet has attempted for a number of months to seek compensation for minutes that exceeded the 3:1 ratio at the interim compensation rates established by the FCC in its Inter-Carrier Compensation order in CC Docket No. 96-98,

released April 27, 2001. While this new rate regime officially went into effect on June 14, 2001 for carriers entering into new or renegotiated interconnection agreements, the FCC's order was not self-executing for existing interconnection agreements. Instead, the FCC provided that its interim compensation plan would apply prospectively as carriers renegotiate such agreements. The FCC's order further provided that a party could amend the terms of an existing interconnection agreement if permitted to do so by a change-of-law provision.

However, Verizon-WV has simply refused to compensate FiberNet for these excess minutes (minutes exceeding the 3:1 ratio) as prescribed by the FCC in its Inter-Carrier Compensation Order, and has also refused to negotiate any alternative mechanism regarding compensation for these excess minutes. Verizon-WV has taken the position that because the West Virginia Public Service Commission decided back in 1999 in Case No. 99-0426-T-P that traffic in excess of the 3:1 ratio was not subject to reciprocal compensation, it can apparently maintain that position in perpetuity.

While FiberNet agrees in part that the Commission in Case No. 99-0426-T-P initially decided that reciprocal compensation was not required for traffic exceeding a 3:1 ratio, the Commission also readily acknowledged the fact that there was no current FCC ruling in place at that time that adequately addressed the issue of compensation for ISP-bound traffic. Moreover, the Commission clearly indicated that CLECs had the right to negotiate alternative methods of compensation with ILECs, and further that Verizon-WV (then Bell Atlantic) had an obligation to negotiate an alternative method with any CLEC that had an existing interconnection agreement.

As noted above, since the issuance of this Commission's orders in Case No. 99-0426-T-P, the FCC issued its Inter-Carrier Compensation order in Docket Nos. 96-98 and 99-68, respectively. In this order, the FCC did a comprehensive review of the issues relating both to reciprocal compensation and to compensation for ISP-bound traffic. In the FCC's order in paragraph 78, the FCC clearly identified traffic in excess of the 3:1 ratio as being ISP-bound traffic, and more importantly, established a compensation mechanism such traffic to be utilized by the telecommunications industry over a three-year period.

Since that time, FiberNet has attempted to negotiate in good faith with Verizon-WV so that FiberNet would be able to properly receive compensation for ISP-bound traffic in accordance with the FCC's decision. However, Verizon-WV has to date steadfastly refused to provide compensation for these ISP-bound minutes in accordance with the FCC's decision or provide any form of compensation whatsoever for these minutes.

It is clear that Verizon-WV's actions in this regard violate both the letter and the spirit of the FCC's Inter-Carrier Compensation Order. Verizon-WV should either be required to adopt the interim compensation mechanism established by the FCC for the minutes exceeding the 3:1 ratio or be required to negotiate an alternative mechanism for compensation for the minutes exceeding the 3:1 ratio. FiberNet believes that one way or another it is legally entitled to compensation for this traffic. Again, until Verizon-WV is made to comply with the applicable orders issued by both the Commission and the Public Service Commission of West Virginia, it cannot be deemed to be in compliance with Checklist Item 13.

XI. Verizon-WV's Marketing and Win-Back Strategies Are Anti-Competitive And Must Be Cured Prior to Verizon-WV Being Permitted To Provide In-Region, InterLATA Long Distance Service in West Virginia.

Earlier this year, FiberNet started receiving calls from our customers complaining that they had been contacted by telemarketers who represented that they were working on behalf of Verizon. These Verizon telemarketers essentially told our customers that FiberNet was going out of business, and that they needed to switch their service back to Verizon-WV or risk being unexpectedly put out-of-service. FiberNet considered this matter to be of such importance that it informed Verizon-WV of what was transpiring via letter dated February 7, 2002 to Gale Y. Given, the President of Verizon-WV. In this correspondence, FiberNet requested that Verizon-WV investigate and put an immediate stop to this clearly unethical and anti-competitive practice.[39]

Similarly, FiberNet received a report that an individual acting on behalf of Verizon-WV had called one of its customers. After first inquiring as to whether this customer's service had been switched to FiberNet without the customer's authorization, the Verizon-WV representative told this customer that the prices FiberNet was charging the customer were "promotional" prices that would be increasing significantly after the "promotion" was over. The Verizon-WV telemarketer urged FiberNet's customer to switch service back to Verizon-WV.

Most recently, FiberNet received information from a potential customer regarding her decision to stay with Verizon-WV. According to this customer, a Verizon-WV representative informed her that if she switched her telephone service from Verizon-WV

[39] A copy of the actual correspondence sent to Ms. Given on February 7, 2002, as well as copies of e-mails further describing Verizon-WV's anti-competitive "win back" practices was attached as Exhibit E to the

to a competing carrier she would be required to pay in order to have her business listed in the telephone directory. In other words, Verizon-WV basically represented to this customer that the customer would no longer be able to obtain free white page and yellow page directory listings if the customer migrated telephone service to FiberNet. This is perhaps the most disturbing example of Verizon-WV's anti-competitive activities because it came directly from Verizon-WV's local business office and not from a telemarketer or other outside contractor.

FiberNet unfortunately get reports like this from our sales group on a consistent basis. FiberNet has also had similar experiences with Verizon-WV in instances in which its customers' directory listing were not properly printed in the telephone directory or were left out completely. When customers contact Verizon-WV to complain about the dropped or improper directory listing, Verizon-WV representatives have attempted to scare FiberNet customers through disinformation by telling customers that their directory listing was omitted because they were customers of FiberNet. The only logical explanation for actions such as these on the part of Verizon-WV is to undermine FiberNet's business and business reputation in an effort to "win back" these customers on the retail side.

FiberNet has also encountered situations in which Verizon-WV has offered services at below cost in order to retain present customers or to solicit new ones. Even in a competitive marketplace, which largely does not exist in West Virginia at the present time, Verizon-WV should not be permitted to offer telecommunications services to customers at prices a competitor cannot reasonably be expected to match. For example, a

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"Direct Testimony of Virgil E. Parsons on behalf of FiberNet, LLC," which was identified and marked as FiberNet Exhibit No. 3, in Case No. 02-0809-T-P.

CLEC simply cannot compete fairly with Verizon-WV in situations where the loop the CLEC purchases from Verizon at $14.49, which is the 2-wire POTS analog loop rate in Density Cell 1, is being sold by Verizon-WV to its retail customers at a price considerably below this figure.

Because of its superior financial resources, Verizon-WV can afford to offer services to select customers below cost in an effort to solicit or retain them. However, a CLEC like FiberNet cannot -- at least not if the CLEC wishes to survive long term as a viable competitive business enterprise. This is an extremely important competitive issue that must be addressed prior to Verizon-WV's entry into the long distance market in West Virginia. Otherwise, Verizon-WV will continue to use its monopoly status in the marketplace in order to ward off competitors. If local exchange competition is truly to develop in West Virginia, the playing field must be leveled with regard to the pricing of telecommunications services.

In sum, these are serious issues that directly impact upon the ability of CLECs like FiberNet to effectively compete with Verizon-WV. The Commission should not tolerate improper and clearly unethical tactics such as these, and safeguards to protect against such tactics must be implemented prior to Verizon-WV being permitted to provide into in-region long distance service in West Virginia.

XII. The Granting of Verizon-WV's Application Is Not In The Public Interest

Under Section 271(d)(3)(C) of the Telecommunications Act, the Commission may not grant Verizon-WV's long distance application unless it is *"consistent with the public interest, convenience and necessity."* This public interest inquiry must, by necessity, be a broad one, and must be viewed by the Commission as a separate,

independent requirement for Verizon-WV's entry into long distance. Indeed, this public interest standard was intended to mirror the broad public interest authority the Commission had been given in other areas.[40] The legislative history of the 1996 Act evidences an unequivocal intent on the part of Congress that the Commission "in evaluating section 271 applications … perform its traditional broad public interest analysis of whether a proposed action or authorization would further the purposes of the Communications Act."[41]

Accordingly, the state of actual local exchange competition in West Virginia, the current status, both financially and operationally, of the CLECs operating in West Virginia, and the potential impact on consumers and competition if Verizon-WV is granted entry into the interLATA long distance business given the lack of meaningful competition currently existing in West Virginia should be of paramount importance to the Commission during its evaluation of the merits of Verizon-WV's Section 271 Application.

Undoubtedly, entry into the interLATA market is the ultimate incentive for Verizon-WV to cooperate in making its network available to competitors at cost-based rates. The principle underlying Section 271 is generally once there is sufficient competition in the local exchange market, then Verizon-WV will no longer be able to exercise market power in the long distance market. If Verizon-WV is authorized to offer in-region interLATA services in West Virginia while still maintaining an effective monopoly in the local market, then such authorization cannot be seen as being consistent

[40] See 47 U.S.C. § 241(a); § 303; § 309(a); § 310(d).
[41] In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, Paragraph 385 (1997) ("Ameritech Michigan 271 Order").

with the "public interest, convenience and necessity" required by Section 271 (d)(3)(c). Quite the contrary, premature entry of Verizon-WV into the in-region long distance market will have a chilling effect on competitors' ability and willingness to enter the local exchange market in West Virginia – an outcome that will result in fewer competitive choices for consumers.

In FiberNet's view, it is incumbent upon the Commission to consider relevant information regarding the effective state of local exchange competition in West Virginia before Verizon-WV is granted Section 271 authority. The Commission must consider these issues so that it will have a full picture of whether meaningful local exchange competition is in fact well underway in West Virginia, and whether the local exchange market in West Virginia is indeed fully and irreversibly open before deciding whether to approve Verizon-WV's entry into the in-region long distance market.

In this regard, an objective examination of the factual circumstances present in West Virginia reveals that very little actual local exchange competition presently exists in West Virginia, and the little that does exist is limited primarily to the Charleston-to-Huntington corridor, and to other of the major metro areas in West Virginia such as Wheeling, Parkersburg, Beckley and Fairmont/Clarksburg/Morgantown. According to Verizon-WV's own data, competitors in West Virginia hold only 4.2% of the access lines in Verizon-WV's service area. This percentage of competition is less, and in most cases significantly less, than the level of competition that existed in other jurisdictions within the Verizon footprint at the time similar Section 271 filings were made in those jurisdictions.

For example, competitors in Virginia held 16% of the access lines in Verizon-VA's service territory at the time of the filing of its Section 271 application in that state. Similarly, competitors in Maryland held 11% of the access lines in Verizon-MD's service territory at the time Verizon-MD filed its Section 271 application. These figures are substantially less than the mere 4.2% of access lines held by competitors in West Virginia. Similar results are found when comparing the number of collocation arrangements in West Virginia as opposed to those in other similarly situated Verizon jurisdictions as well as the number of "active" CLECs in West Virginia as opposed to those CLECs active in other Verizon jurisdictions.

In its Rhode Island Order, the Commission recently stated that the public interest standard does not require it to "consider the market share of each entry strategy for each type of service."[42] However, the public interest standard does require that local competition be healthy and sufficient to endure after Verizon-WV's entry into the in-region, interLATA long distance market in West Virginia. Low levels of facilities-based competition, particularly in the residential market, should signal that competitors are unwilling or unable to make a sizeable investment in this market. If competition is not fully and irreversibly enabled, the Verizon-WV will retain its monopoly control over customers, and its entry into the long distance market will not serve the public interest.

Based on the information available in West Virginia, it is clear that viable local service competitive choices are not available to consumers today throughout all parts of West Virginia. Residential competition is nearly non-existent, and there is not adequate

[42] In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region,

CLEC presence in West Virginia at this time to support Verizon-WV's bid to obtain Section 271 relief at the present time. Competition in the local market in West Virginia is not thriving and continues to be dominated by Verizon-WV. The simple fact remains that Verizon-WV still controls bottleneck assets in West Virginia. In particular, the local loop remains a bottleneck, and so Verizon-WV has continued market power as evidenced by the fact that it still maintains nearly 96% of the subscriber access lines within its service territory some six years after the passage of the Telecommunications Act.

Quite frankly, local telephone competition has been an unfulfilled promise in West Virginia for far too long. Consumers want to select their local phone company. Customers want access to innovative services at affordable prices. Rural customers want equality. These goals have been largely frustrated in West Virginia for a variety of reasons for more than five years now. Given the state of the competitive telecom industry in general, and in West Virginia specifically, and given Verizon-WV's continuing efforts to thwart the development of meaning local exchange competition, granting Verizon-WV Section 271 authority in West Virginia is clearly not in the public interest, and consequently, Verizon-WV's Application should be denied.

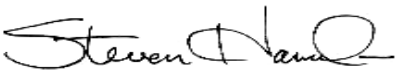
XIII. Conclusion

For all of the foregoing reasons, FiberNet would respectfully request that the Commission deny Verizon-WV's Application to provide in-region, interLATA services in the State of West Virginia.

Respectfully submitted this 9th day of January, 2003.

By Counsel,

InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, released February 22, 2002, Paragraph 106 (Rhode Island Order).



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